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OF

LEGISLATIVE AND OVERSIGHT ACTIVITIES DURING THE 104TH CONGRESS

UNITED STATES SENATE COMMITTEE ON SMALL BUSINESS

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I. CHAIRMAN'S SUMMARY OF COMMITTEE ACTIVITY FOR THE 104TH CONGRESS

As Chairman of the U.S. Senate Committee on Small Business during the 104th Congress, I organized the Committee's agenda so we could focus on the highest priority recommendations from the 1995 White House Conference on Small Business and respond to the input and concerns expressed by small business owners across the nation during the Committee's "Entrepreneurship in America" hearings. This report summarizes the legislative and oversight activities of the Committee on these key issues of concern and interest to small businesses.

A. REGULATORY FAIRNESS

One of the primary concerns of small business owners across the nation is the disproportionate burden they bear in complying with an overwhelming and ever-increasing number of complex federal regulations. Antiquated federal rule-making procedures—generally designed for larger firms that have more resources to deal with the resulting compliance costs—have long been a serious concern to smaller entrepreneurs and were a constant theme at both the White House Conference and at Committee field hearings. As Committee Chairman, I made regulatory fairness for small businesses one of our highest priorities during the 104th Congress. I authored the Small Business Regulatory Enforcement Fairness Act (SBREFA) that passed Congress on March 29, 1996 and became effective on July 1, 1996. The measure, when fully implemented, will provide small business owners with a level regulatory playing field both at the front end of the rule-making process when agencies first propose regulations, as well as at the enforcement phase, where, all to often, small businesses are treated exactly the same as large corporations and federal agencies are not held accountable for their actions.

The SBREFA law contains some important, innovative provisions. It adds judicial teeth to the Regulatory Flexibility Act, a 1980 law requiring federal agencies to consider ways to reduce the economic impact of new regulations on small businesses and local governments. The original Reg-Flex Act, although well intentioned, has been routinely ignored by agencies because it lacked statutory teeth. A centerpiece of the SBREFA law is language permitting small entities to seek judicial review of agency compliance with the Reg-Flex Act so that small businesses and other small entities, such as local governments, can take federal agencies to court if they continue to ignore the Act's requirements. SBREFA also includes the following important items:

It requires agencies to prepare "Plain English" compliance guides that will allow small business owners to comply with federal regulations without having to hire a team of lawyers to interpret them;

It requires federal agencies to establish policies or programs providing for waivers or reductions in civil penalties for non-serious infractions that do not involve willful violations, criminal conduct, or violations that pose serious threats to health, safety and the environment;

It sets up an independent Ombudsman at the Small Business Administration to receive confidential complaints and comments from small businesses about their dealings with federal regulators and establishes regional citizen review boards to "rate the regulators" based on these comments and publish their findings in a "report card" for each agency;

It makes it easier for small businesses to recover attorneys fees when agencies make demands for fines and penalties that are not sustainable in court; and

It allows Congress to review and disapprove new regulations written by federal agencies within a 60 day window.

Another important law passed by this Congress, the 1995 Paperwork Reduction Act, should help reduce the regulatory and paperwork burden currently faced by small businesses. During the 104th Congress, the Committee held hearings to ensure that federal agencies comply with this important legislation. At our hearing on the implementation of this law, testimony from the General Accounting Office (GAO) indicated that federal agencies had failed to reach their obligation under the Act to reduce paperwork by 10% in the first year following enactment. In fact, using the Office of Management and Budget's own numbers, GAO concluded that the actual reduction achieved was less than 1% in 1996. Clearly, that is unacceptable. As Committee Chairman in the 105th Congress, I will follow this issue closely, and I will continue my efforts to make certain that federal agencies comply with the laws passed by Congress.

B. Small Business Tax Issues

The lack of a level playing field with regard to taxation and tax compliance is a major concern for small business owners who, once again, bear a disproportionate burden in complying with a U.S. tax code that has not kept pace with the changing economy and the dramatic expansion of small businesses. In hearing after hearing during this Congress, small business owners have expressed to me their deep concerns—not only with the level of taxes that must be paid to Washington—but with the enormous time and costs involved just trying to understand the litany of red tape promulgated by the Internal Revenue Service. Time and money spent trying to understand complicated tax procedures and arcane tax law results in time not available for running the business and money not available for expansion, investment and new jobs. Issues of taxation elicited the most concern from delegates at the White House Conference, resulting in some of their highest priority recommendations for legislative action. The delegates' recommendations included clarifying the definition of an independent contractor, raising the deductibility of health-care costs for the self-employed to 100%, restoring a meaningful home-office deduction, increasing the expensing deduction for new equipment purchases, and expanding small business pension plans.

As Committee Chairman, I authored legislation to clarify the definition of an independent contractor—this was voted the most important small business issue at the White House Conference. That is because the IRS uses a complex and highly subjective 20-factor, common-law test to determine whether a worker is an employee or independent contractor. This test has created fear and confusion for entrepreneurs who are subject to worker reclassifications and collection of back taxes if they get it wrong. Recent evidence has demonstrated that the IRS has resolved too many cases in favor of an employment relationship at the expense of bona fide independent-contractor arrangements. I introduced a bill during the 104th Congress, the Independent Contractor Tax Simplification Act, S. 1610, that would replace the 20-factor test with three simple questions. By the end of the 104th Congress, the bill had 32 co-sponsors in the Senate, and I will re-introduce legislation on this issue in the 105th Congress.

Meanwhile, small businesses received some important tax changes in the Small Business Job Protection Act that was enacted in 1996:

Although not as comprehensive as my Senate bill, some changes were made to the Revenue Act of 1978 that will reduce some of the confusion surrounding worker classification and independent contractors.

Senator Bob Dole's 'SIMPLE' plan was enacted, making it easier for small employers to establish retirement-savings plans for their employees.

The amount a small business can deduct for new equipment purchases will be raised gradually, from its current level of $17,500 to $25,000 in 2003.

The Act makes it easier to form subchapter S corporations, raising the number of shareholders who can organize as S corporations from 35 to 75. That will result in more risk-sharing and, consequently, more investment in small businesses.

Small business owners who perform their work outside of their home, but whose office is their home, should be allowed to claim a home-office deduction without fear of an IRS audit. This is very important to the self-employed and to those parents raising children while working at home. As the number of home-based businesses increases, the importance of the deduction mounts. In excess of some nine million Americans now operate home-based businesses and that number continues to grow rapidly. Women have a significant stake in the market, owning 70% of these businesses. Accordingly to the Small Business Administration, 300,000 women start home-based businesses every year.

I co-sponsored a measure in the Senate, the Home Office Deduction Act of 1995, S. 327, that would have expanded the use of the home-office deduction and leveled the playing field for self-employed business owners who work at home. The legislation would have overturned the 1993 *Commissioner* v. *Soliman* Supreme Court decision. In that case, Dr. Solimon, a practicing physician based out of his residence, was not permitted by the IRS to deduct his home-office expenses because much of his work, such as visiting patients and practicing medicine at several facilities, was done outside the home. S. 327 would have overturned the Supreme Court ruling with language that states that the home office deduction may be utilized when the majority of essential day-to-day administrative functions of the office are performed in the home and when there is no other principal place of business to expedite those functions. Unfortunately, the measure did not reach the Senate floor during the 104th Congress.

Under the current tax system, corporations can deduct 100% of their share of an employee's health-insurance costs, but the self-employed farmer, child-care provider, or truck driver can only deduct 30%. It comes as no surprise, then, that nearly 25% of the self-employed do not have health insurance, which results in 4 million families headed by a self-employed worker not having access to health insurance coverage. That is unfair, and I have been trying to raise the deduction amount for the self-employed to 100%. The Health Insurance Reform Act that was enacted into law during this Congress will raise the amount, incrementally, to 80% by the year 2006. It is not perfect, but it is the best we could get at the time. A measure that would have raised the deductible amount to 55% immediately failed when President Clinton vetoed the Balanced Budget Act of 1995.

Under the current tax system, family-owned enterprises that are passed from one generation to the next often must be sold off just to pay the estate or inheritance tax. Clearly, that is counter-productive for the economy and unfair to American families. The family-owned small business is a cornerstone of American entrepreneurship, and I believe Congress should modify the estate tax, helping family-owned small businesses remain in the family. During the 104th Congress, I co-sponsored the American Family Owned Business Act of 1995, which would have raised the tax exclusion on family-owned businesses from $600,000 to $1,000,000, eliminated the tax on the first $1.5 million of the business' value, and reduced by 50% the tax on business assets over $1.5 million.

C. Workplace Issues

For the smallest of small businesses, a mandatory increase in the minimum wage is a job killer. That is why I offered a common sense small business exemption to the wage hike enacted during the 104th Congress. The amendment failed by a very narrow margin. My exemption would have protected businesses grossing less than $500,000 per year from what amounts to a 20% mandatory increase in their labor costs.

One of the agencies most frequently cited by small business owners as heavy handed when it comes to federal regulation of the workplace is the Occupational Safety and Health Administration (OSHA). In spite of the many complaints from small businesses leveled against OSHA and the widely held perception that it operates with a 'gotcha' mentality, OSHA continues to issue heavy fines on small business owners for minor paperwork and posting violations that often have no bearing on employee health and safety. At the same time, the agency has not offered sufficient assistance to many employers who are seeking genuine voluntary compliance with federal rules. The simple fact is that the overwhelming majority of employers care about their employees and know safe workplaces save money through high productivity and lower workers' compensation expenses.

In 1996, I co-sponsored the OSHA Reform and Reinvention Act, S. 1423, that would have made real progress toward providing relief to small businesses by replacing OSHA's "gotcha" mentality with a common sense approach that redefines the agency's mission as a cooperative partnership with small business. Under this legislation, OSHA would continue to be there when the employer is making no effort to comply voluntarily with health and safety standards. But employers who take positive, reasonable steps to maintain safe workplaces would no longer have to fear OSHA for technical violations that have little to do with worker safety. The long-term result of sensible OSHA reform would be improved worker safety, more private sector growth, more jobs, and less red tape for small businesses. Unfortunately, President Clinton threatened to veto this measure and the bill was never reported out of the Senate Labor Committee.

The inability of employees who work in non-union companies to have a say in their workplace environment was also a significant issue during the 104th Congress. As Chairman of the Small Business Committee, I co-sponsored the Teamwork for Employees and Management (TEAM) Act, S. 295, that would have provided non-union employees of small businesses a greater say in workplace issues by removing the barriers to employee involvement programs and worker-management committees that are contained in the antiquated 1935 National Labor Relations Act. The TEAM Act amends this law to allow employees and managers at non-union companies to resolve workplace issues such as scheduling, safety and health, and even things like free coffee and company softball teams. The legislation would not have allowed employee teams to act as unions since they could not engage in collective bargaining or act as exclusive representatives of employees. This measure passed the Senate late in the second session but was vetoed by President Clinton.

The virtually unlimited punitive damage awards allowable under current law has enormous consequences for small business owners. Even when lawsuits are frivolous, the high cost of retaining an attorney and the risk of catastrophic loss often means that a small business owner must settle the case out of court, regardless of the merits involved. Unlike large corporations that have more resources to fight frivolous lawsuits, small business owners are often destroyed by them. As Chairman of the Small Business Committee, I co-sponsored and voted for the Product Liability Fairness Act of 1995, S. 565, a bipartisan measure that would have decreased frivolous lawsuits against small businesses while still allowing wide latitude for plaintiffs to bring lawsuits, including the imposition of punitive damages to deter egregious behavior. The measure requires "clear and convincing evidence" that the defendant in a lawsuit acted with "conscious, flagrant disregard" of the plaintiff's rights or safety before large punitive damage awards can be made. The legislation passed the Senate with more than 60 votes, but was vetoed by President Clinton.

D. Access to Capital: Small Business Administration Programs

Legislation produced by the Committee in the 104th Congress to strengthen SBA's finance programs has led to an enormous expansion in the availability of bank loans and investment capital for small business borrowers, while reducing the cost of these programs to taxpayers. For small business owners, who often have difficulty securing capital from traditional lending sources such as commercial banks, the strength and availability of SBA loan and loan guarantee programs is a critical issue.

In 1995, Congress enacted the Small Business Lending Enhancement Act, a bill I wrote to provide a major increase in program availability for SBA's 7(a) guaranteed business loan program. The legislation restructured the program to provide over $10 billion in loans to meet the growing demand of small businesses through fiscal year (FY) 1996. The measure shored up the 7(a) program by lowering the credit subsidy rate from 2.74% to 1.06%, a 61% reduction in the subsidy rate. This change has a significant impact on the volume of loans that can be made to small businesses because when the subsidy rate is lowered, the total loan authorization amount can increase even with a smaller appropriation of taxpayer money. Taxpayers and small business owners alike have benefited from this program expansion. In FY 1995, $214 million was needed to support a loan program of $7.8 billion. Under S. 895, in FY 1996, the Senate appropriation of only $133 million will support $12.5 billion in loan guarantees.

In 1996, Congress approved a comprehensive bill reported by the Committee to overhaul the Small Business Investment Company (SBIC) program, which provides SBA-guaranteed risk capital for investment by venture capital firms in small businesses. The Act strengthens the SBIC program while limiting the risk of loss to the federal government that had plagued the program in the past. The Act expands by 80% the amount of investment capital available to small business owners—from $373 million to $620 million—while reducing the taxpayer cost of the program by 46%.

Historically, women have had more difficulty than men in securing capital and that is something that must change. In addition to the benefits women entrepreneurs will receive with the expansion of the 7(a) program, the SBA's Women's Business Ownership Demonstration Project, a program that the Committee authorized during the 104th Congress, has been successful in helping to address this problem. When the SBA re-authorization bill comes up next year in the 105th Congress, I will sponsor a three-year extension of this important women's program.

One of our greatest challenges in America today is to bring jobs and economic opportunity to those without hope in the inner cities and the depressed rural areas of our country. There is a way we can do this, and I am excited about the prospects. In 1996, I introduced a bill creating HUBZones (Historically Underutilized Business Zones). If passed and signed into law, the HUBZones legislation would provide government contracting preferences and set-asides to any small business located in and hiring employees from economically distressed urban and rural areas across the country.

This measure would benefit entire communities by creating meaningful incentives for small businesses to operate and provide employment within America's most disadvantaged inner-city neighborhoods and rural areas. For these distressed areas, HUBZones would result in the immediate infusion of sorely needed capital as more and more businesses—both start-ups and existing enterprises—relocate into HUBZone areas in order to improve their changes of receiving federal contract awards. The net result would be meaningful job creation and community development in areas of perennial high unemployment and low income. Most importantly, HUBZones would help to accomplish an important objective of welfare reform—providing jobs for individuals who want to move from welfare to work.

I believe we should place greater emphasis on programs that encourage small businesses to provide jobs and economic development where they are needed most. The HUBZones legislation would accomplish that objective and help break the cycle of poverty that has isolated distressed areas of our country. My bill, which was not reported out of the Small Business Committee, will be re-introduced in the next Congress.

E. Health Care Issues

Health care continued to be one of the top issues of concern for small businesses during the 104th Congress. During the Committee's "Entrepreneurship in America" series of hearings, we heard from a number of small businesses concerning the difficulties they face in obtaining and maintaining health-care coverage. In response to these calls for assistance, I co-sponsored the Health Insurance Portability and Accountability Act of 1996, which included a number of the health-care recommendations adopted by the White House Conference on Small Business delegates.

The Act includes several provisions specifically designed to assist small businesses, including a pilot program for Medical Savings Accounts available to self-employed individuals and businesses with less than 50 employees. The Act also increases the deductibility of health-insurance costs by self-employed individuals incrementally from the 1996 level of 30% to 80% by the year 2006. While this increase is a step in the right direction, I will introduce legislation in the 105th Congress to accelerate the deduction to 100% and fully level the playing field for small businesses.

F. Banking and Financial Institutions

In connection with its overall efforts to provide regulatory reform for small businesses, the Committee also focused on regulatory relief for small banks. Towards that goal, I joined a number of Senators in co-sponsoring the Economic Growth and Regulatory Paperwork Reduction Act, S. 650, which was incorporated into the 1997 Omnibus Appropriations Act and will provide regulatory and paperwork relief for small banks across the nation.

I also promoted several other reforms that would assist small financial institutions including extension of federal examination cycles for certain banks with strong capitalization and management; expansion of the exemptions from home-mortgage-data-reporting requirements; and changes to the Truth-in-Lending Act, the environmental liabilities laws and bank application processes. Each of these changes will mean reduced administrative costs for all financial institutions, including small banks.

G. Securities Laws

Small businesses were the beneficiaries of two securities-related laws enacted by the 104th Congress. The Private Securities Litigation Reform Act of 1995 makes broad modifications to the rules governing private securities litigation and class action suits. As an advocate of these revisions, I believe they will assist small enterprises that are just beginning their businesses, as well as those small firms that are expanding their operations by helping them obtain important capital financing.

The Capital Markets Efficiency Act of 1996 will also benefit small businesses by streamlining the regulatory compliance rules applicable to small investment advisors who operate in several states. This legislation's uniform federal de minimis registration exemption for small investment advisors and its uniform books and records requirements for small investment advisors will go a long way towards alleviating the paperwork and regulatory burdens imposed on small firms in the investment industry.

H. Telecommunications

The 104th Congress made significant headway in overhauling the nation's telecommunications laws, which will enable small telecommunications firms more opportunities to compete in this dynamic and growing industry. The Telecommunications Act of 1996, S. 652, ends 40 years of excessive government regulation by opening the local telephone marketplace. While I supported these changes, as Committee Chairman I also recognized the risk that small firms could be subject to discrimination and other entry barriers. As a result, I undertook efforts to ensure that this legislation included safeguards to protect small businesses' opportunity to compete in this market. I also encouraged the Federal Communications Commission to utilize the Market Entry Barriers Proceeding provisions of the bill to the fullest extent to eliminate market barriers to small businesses participation in the telecommunications industry.

On a related issue, the availability of cable programming at fair and competitive prices continued to be a concern during the 104th Congress. In response to the proposed merger between Time-Warner Inc. and Turner Broadcasting System, I contacted each of the five commissioners of the Federal Trade Commission (FTC) to call their attention to the risk of price discrimination against small cable carriers, which could result if the FTC approved the merger. The final FTC consent decree addressed these concerns by requiring Time-Warner to adhere to nondiscriminatory pricing policies. The decree also restricted Time-Warner from bundling services and engaging in practices that would reduce the opportunity of small cable operators to compete in this market place.

I. Product Liability Reform

The business community, and in particular small business, has long called for reform of the country's product liability system. As Chairman of the Committee, I strongly supported legislation introduced by Senator Gorton and Rockefeller that included uniform statutes of limitations and repose, limited liability for sellers that are not manufacturers, and several liability for non-economic damages. I also advocated that the legislation include a reasonable limit on punitive damage awards of $250,000 or twice the economic damage award for businesses with fewer than 25 full-time employees. This provision was included in the final bill, and the legislation was approved by both the Senate and the House. Despite the strong endorsement from the small business community, President Clinton vetoed the bill.

As the foregoing sections demonstrate, the Committee's activities on issues important to American small businesses have been diverse and far reaching. While we made significant progress on a number of our priorities, further steps certainly will be required. I am committed to taking those steps in the 105th Congress as we work to put small businesses and family-owned enterprises on a level playing field with their larger competitors.

II. REGULATORY FAIRNESS

A. Small Business Regulatory Reform

Background

In June 1995 nearly 2,000 delegates to the White House Conference on Small Business came to Washington to vote on an agenda of the top concerns of small business. The Washington meeting completed a year-long grass-roots effort in which over 20,000 small business people sifted through more than 3,000 policy recommendations in 59 state conferences and six regional meetings.

Over 400 of the most important policy recommendations were voted on by the delegates to the Washington meeting. The top 60 recommendations were published by the Conference last September as a report to the President and Congress entitled *Foundation for a New Century*. Not surprisingly, the White House Conference echoed the findings from many of the Committee's hearings in its series on "Entrepreneurship in America." Three of the top recommendations, set out in full below, call for reforms in the way government regulations are developed, in the way they are enforced, and in reducing government paperwork requirements:

> *The Regulatory Flexibility Act (Agenda #183)*
>
> Congress should amend the Regulatory Flexibility Act, making it applicable to all federal agencies including the Internal Revenue Service and the Department of Defense, to include the following:
>
> > Require cost-benefit analysis, scientific-benefit analysis and risk assessment on all new regulations and Internal Revenue Service interpretations;
> >
> > Grant judicial review of regulations, providing courts the ability to stay harmful and costly regulations and to require agencies to rewrite them;

Require small-business representation on policy-making commissions, federal advisory and other federal commissions or boards, whose recommendations impact small business. Input from small business representatives should be required in any future legislation, policy development, and regulation making affecting small businesses; and

With respect to all regulations involving small business, require negotiated rulemaking proceedings for adoption of all rules, with small business representing 50 percent of the negotiating panel.

Regulatory Compliance/Agency Enforcement Reform (Agency #194)

Congress shall enact legislation and appropriate enforcement to include all of the following:

Require that all agencies provide a cooperative/consulting regulatory environment that follows due process procedures and that the agencies be less punitive and more solution-oriented in dealing with unintentional regulatory violations;

Require that fines take into account the severity of the infraction, size and type of company, the past safety record and the frequency and severity of the violations;

Allow proposed fines to be used toward correcting violations;

Prohibit fines either for violations identified during a consulting visit requested by the company, or by an agency investigator and brought to the attention of the employer for the first-time specific violation. If the company is found to be in substantial compliance; the employer and inspector should negotiate a reasonable timetable for compliance, and fines should be levied only for failure to comply with that timetable;

Allow small business the option of binding arbitration to resolve any dispute with any federal agency;

Require that regulatory agencies to put the fines that they impose and collect into the general treasury fund toward retiring the national debt; said agencies should be prohibited from receiving credit or usage of such monies;

Require that the liability of the employer and the employee be relative to their respective culpability; and

Require enforcement actions to comply with American due process concepts; adequate notice and opportunity to be heard, a presumption of innocence until proven guilty, and the issuance of an impartial judgment.

Paperwork Reduction/Paperwork and Regulatory Reform (Agency #188)

Congress shall enact legislation and appropriate enforcement provision to include all of the following:

Require all agencies to simplify language and forms required for use by small business and that only the English language be required;

Require all agencies to sunset and reevaluate all regulations every five years, using the same standards required for new regulations, with the goal of reducing total paperwork burden by at least 5 percent each year for the next five years;

Require agencies to assemble information through a single source on all small-business related government programs, regulations, reporting requirements, and key federal contacts' names and phone numbers, with as much as is feasibly available by online computer access; and

Eliminate duplicate regulations from multiple government agencies.

The common theme of all three recommendations is the need to change the culture of government agencies. In his address to the White House Conference, the Vice President expressed a number of similar concerns with government regulations and the need for cultural change within government agencies, saying:

> The old way was for government to treat business like a suspect and the goal seemed to be to catch you red handed. That was yesterday's government. The new way, one of the things we found out is something that you've long since learned. You get what you measure. You focus on what you keep track of and if the people on the front line are evaluated and rewarded on the basis of how many fines they issue and how many citations they hand out, then they are going to concentrate on increasing the number of fines and citations.
>
> The new way is for government to treat business like a partner sharing a common goal and the goal is this. A growing business that works in a safe and healthy environment. That is what reinventing government is all about. And we're making progress, it's working. We said when we started this that it would take 8–10 years to change the culture of the federal government and to make all of the changes that are necessary. But already there are a lot of results.
>
> Well, the old OSHA used to look at their inspections to see if that poster was up and if the poster wasn't up that was an automatic $400 fine. And it was a hefty percentage for what the fines were. Here's what the new OSHA will do if they find out that you don't have the poster up. Instead of giving you a $400 fine, they give you a poster.

Legislation

As a result of the recommendations of the White House Conference and based on testimony taken at the Committee's "Entrepreneurship in America" field hearings, Chairman Bond introduced the Small Business Regulatory Fairness Act of 1995, S. 942. In addition, Senator Domenici introduced the Small Business Advocacy Act of 1995, S. 917, drawing on the White House Conference recommendation and on testimony received at the Committee's field hearing, "Entrepreneurship in America: Excessive Governmental Burdens on Small Business," held in Albuquerque, New Mexico, on February 20, 1995 [See Hearings of the Committee]. Both bills were referred to the Small Business Committee, and together with S. 350, became the basis for the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

As enacted into law, SBREFA contains a number of important provisions to implement recommendations of the White House Conference on Small Business:

Compliance Guides. SBREFA requires agencies to publish an easily understood guide to assist small business in complying with regulations which undergo a required Regulatory Flexibility analysis. Courts will not second guess the adequacy of the guides, but the guide and the agency's claim that the guide provided "plain English" assistance will be available as evidence of the reasonableness of any proposed fine on the small entity.

Informal Small Entity Guidance. SBREFA directs agencies to answer inquiries of small entities concerning information on and advice about regulatory compliance. The agency's advice need not be binding and dispositive as to the legal effects of a small entity's actions, but will be available as evidence of the reasonableness of any subsequently proposed fine on the small entity.

Services of Small Business Development Centers. SBREFA allows Small Business Development Centers to provide small businesses information on complying with regulatory requirements. This is not an exclusive grant of authority, but is in addition to programs such as the state-run stationary source technical assistance programs developed under section 507 of the Clean Air Act Amendment of 1990.

Small Business and Agriculture Enforcement Ombudsman and Regional Boards. SBREFA creates a Small Business and Agriculture Enforcement Ombudsman at SBA to provide a confidential means for small businesses to comment on agency enforcement actions and to develop an annual "customer satisfaction" rating of the responsiveness to small businesses of agencies and agency offices. SBREFA also creates Regional Small Business Regulatory Fairness Boards at SBA which coordinate with the Ombudsman to provide small businesses with a greater opportunity to track agency enforcement policy and practice and to provide that information to Congress.

Small Business Enforcement Policies and Programs. SBREFA requires federal agencies to develop programs to waive or reduce civil penalties for violation by small businesses, and to consider a small business' ability to pay when assessing penalties. The agencies will establish appropriate conditions and exceptions from the policy, such as for serious threats to public health, safety, or the environment.

Leveling the Playing Field. SBREFA assists small businesses in recovering their attorney's fees if they have been subject to excessive and unsustainable proposed penalties or other enforcement actions. The Equal Access to Justice Act (EAJA) has proven to be a limited value in leveling the playing field between small businesses and the federal government. SBREFA amends the EAJA to create a new avenue allowing small entities who have not willfully violated the law and otherwise acted in good faith to recover their attorney's fees necessary to fight excessive government demands in enforcement actions. Under the new provision, the test for recovering attorney's fees is whether the agency demand in an enforcement action (whether a fine, injunctive relief or damages) is substantially in excess of the final outcome in the case so as to be unreasonable as compared to the final outcome. SBREFA also increases the maximum hourly rate for attorney's fees under the EAJA from $75 to $125.

Regulatory Flexibility Act. SBREFA clarifies the requirements of the Regulatory Flexibility Act (RFA) to apply unambiguously to IRS regulations and interpretive rules and subjects final agency action under the RFA to judicial review. It does not change or in any way affect the legal standards of the underlying statute. However, the agency must consider ways to minimize the effects of the rule on small entities. If the court finds that the agency action under the RFA was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, the court may set aside the rule and order the agency to take corrective action.

Early Small Business Involvement. SBREFA amends the existing requirements of RFA section 609 for small business participation in the rulemaking process at the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) by incorporating a modified version of S. 917 (the Small Business Advocacy Act, introduced by Senator Domenici) to provide early input from small business. For proposed rules with a significant impact on a substantial number of small entities, EPA and OSHA must collect advice and recommendations from small business to provide better information for the agency's initial regulatory flexibility analysis on the potential effects of the proposed rule. The findings of the Panel and the comments of small business representatives will be made public as part of the rulemaking record.

Congressional Review. SBREFA establishes a 60-day review period following the issuance of any federal agency final rule during which Congress could enact a "joint resolution of disapproval." The joint resolution would be considered by Congress under a "fast track" procedure not subject to filibuster in the Senate. If the resolution is passed by Congress and signed by the President or the President's veto is overridden, the regulation would be null and avoid.

Committee Action

During the Fall and Winter of 1995, Committee staff worked to combine provisions from S. 350, S. 917 and S. 942 into a single legislative package. This package reflected comments received by the Committee since the introduction of these bills. The provisions of S. 350 in particular had been subject to significant modification during and after the debate on the Comprehensive Regulatory Reform Act of 1995, S. 343.

A discussion draft of the combined bill, S. 942, was circulated in February 1996 and was the subject of a hearing held by the Committee on February 28, 1996 [See Hearings of the Committee]. The Committee held a markup of S. 942 on March 6, 1996, at which Chairman Bond offered an amendment in the nature of a substitute to S. 942 incorporating the text of the discussion draft as well as numerous comments received at the hearing. This amendment was adopted by voice vote as was an amendment by Senator Lieberman, directing Manufacturing Technology Centers to provide technical assistance to small businesses on how to comply with federal regulations. S. 942 as amended, the Small Business Regulatory Enforcement Fairness Act of 1996, was ordered reported by a unanimous vote of the Committee. Due to a desire on the part of the Senate to take up this important legislation promptly prior to pending debate on extending the debt ceiling, the Committee reported S. 942 without a written report. However, Chairman Bond and Senator Bumpers submitted a joint statement of explanation of the Committee-reported legislation on March 7, 1996.

Initial objections to proceeding with consideration of S. 942 prevented the Senate from taking up the bill immediately. However, when the Senate took up S. 942 on March 15, Chairman Bond and Senator Bumpers offered a manager's amendment, which reflected changes sought by the Administration during intensive discussions following the Committee markup. The manager's amendment was agreed to by voice vote, as was an amendment offered by Senators Nickles, Reid and Stevens to allow for a 60-day period for congressional review of new regulations. On March 19, the Senate Passed S. 942 as amended by a vote of 100–0.

In the House, a version of the SBREFA with language nearly identical to the Senate-passed version of S. 942 was incorporated into an amendment offered by Congressman Hyde to the Contract With America Advancement Act, H.R. 3136. The Hyde amendment was subsequently incorporated into H.R. 3136 as Title III, which passed the House on March 28, 1996 by a vote of 328 to 121. H.R. 3136 also passed the Senate by unanimous consent on March 28. On March 29, Chairman Bond and Senator Bumpers submitted a joint statement of explanation of the final text of the bill as passed by the House and Senate. Senators Nickles, Reid and Stevens made a joint statement on their amendment to S. 942 on April, 18. On March 29, 1996, the President signed H.R. 3136 into law as Public Law 104–121. Note that in the Public Law, SBREFA is Title II, instead of Title III as in the House-passed version of H.R. 3136 because Title II of H.R. 3136 as passed by the House, dealing with the line item veto, had already passed the Senate and was separately enrolled into law. Thus, SBREFA became Title II of Public Law 104–121.

The Committee held an oversight hearing on July 24, 1996 in Washington, D.C. on the implementation of SBREFA, particularly by EPA and OSHA [See Hearings of the Committee]. In addition, the Committee asked many of the important federal regulatory agencies to provide written descriptions of their SBREFA implementation activities, including the requirement under section 610 of Reg Flex that agencies have a plan to review periodically their existing regulations that effect small entities.

B. Comprehensive Regulatory Reform

Background

The White House Conference on Small Business identified regulatory reform as one of the most important issues for small business in the 104th Congress. From the perspective of small business, regulatory reform involves a number of related, but distinct, initiatives. These include benefit-cost analysis, scientific risk assessment, periodic review of regulations, and reforming the enforcement of regulations.

Legislation

In the Senate, the primary legislative vehicle for regulatory reform was the Comprehensive Regulatory Reform Act of 1995, S. 343, and the substitute offered by Senators Dole and Johnston. This legislation contained provisions that directly addressed many of the reforms identified by the White House Conference, including the language of S. 350 providing judicial review of the Regulatory Flexibility Act (RFA), cost-benefit analysis of regulations, scientific risk assessment of hazards that agencies propose to regulate, and periodic review of existing regulations. Throughout the debate on S. 343 and during the development of the Dole/Johnston substitute, the Committee played a crucial role in redrafting numerous provisions to reflect the small business agenda, including the provisions on judicial review of the RFA, cost-benefit analysis, risk assessment, and periodic review of regulations.

Chairman Bond and Senator Domenici offered an amendment to S. 343, which expanded the scope of regulation reform to include provisions requiring early small business input on proposed EPA and OSHA regulations, and reforms to the enforcement of regulations. Building on provisions in S. 917 and S. 942, the amendment also established small business Ombudsmen and Regulatory Fairness Boards in the SBA regional offices to make government inspectors more accountable for their actions. This amendment was adopted by voice vote.

Another amendment to S. 343, offered by Chairman Bond and Senator Robb sought to allow an industrial facility, or groups of small businesses or small cities, to develop an alternative means of achieving the results required by current environmental regulation. Building in part on the recommendations of the National Academy of Public Administration report, this alternative compliance amendment would allow small businesses or groups of small businesses to solve environmental problems creatively without being constrained by regulations that mandate the use of a specific technology or by the current division of environmental law into media-specific requirements. The resulting alternative compliance agreements would result in a better environment, and a reduced burden on industry, compared with the EPA's current command-and-control approach. S. 343 was withdrawn from consideration before the Senate could vote on this amendment.

C. Regulatory Accounting Requirements

Background

The overall effort for regulatory reform has been hampered by a lack of good data on the true costs and effects of federal regulations. While numerous studies have taken periodic looks at regulatory costs, the federal government does not regularly publish an accounting of the various costs it imposes on individuals and businesses through the regulatory process.

Legislation

Committee staff worked with Senator Stevens to include language in the 1997 omnibus appropriations bill to provide for an annual accounting of the cost and benefits of federal regulation. This amendment implements further the number three recommendation of the White House Conference on Small Business to require cost-benefit analysis of all new regulations.

The regulatory accounting amendment requires the Office of Management and Budget (OMB) to prepare an annual report estimating the costs and benefits of each major rule costing over $100 million (currently this is performed on a rule-by-rule basis). OMB is directed to include an estimate of the cumulative annual quantitative and non-quantitative costs and benefits of all federal rules (including minor rules). OMB is also directed to assess separately the effects of federal rules on the private sector, state and local government, and the federal government. Finally, OMB must provide Congress with a summary of significant public comments and recommendations to reform regulatory programs or program elements that are wasteful or outdated. OMB must provide the public with notice and an opportunity to comment on the draft report before it is submitted to Congress on September 30, 1997. The amendment was supported by a unanimous voice vote in the Appropriations Committee and on the Senate floor.

This "truth in regulating amendment" will inform small businesses and Congress about the benefits and burdens of federal regulations, and provide a mechanism to judge the efficacy of regulatory programs. Unlike on-budget government spending, regulatory programs impose costs that now are accounted for in government budget figures—about $600 billion annually. These costs are passed on to the American consumer and taxpayer in one form or another, including higher prices, lower wages, higher taxes, and reduced government services. The tab is about $6,000 per year for the average American household—about half the federal tax burden faced by most families. Yet until the adoption of this amendment, there has been no centralized accounting of the benefits and costs of regulatory programs.

D. SUPERFUND

Background

The number five recommendation of the White House Conference on Small Business was comprehensive reform of the Superfund program, including repeal of retroactive liability, reliance on sound science using realistic risk assessment and cost-benefit analysis in assessing health risks and selecting cleanup remedies at Superfund sites, making greater use of de minimis exemptions to Superfund liability, and eliminating the liability of fiduciaries and lenders on property held primarily as security for a loan.

Legislation

Most of the Superfund recommendations of the White House Conference were included in S. 1285, the Superfund reauthorization bill introduced by Senator Smith in September 1995. This bill was the subject of lengthy discussions among all of the various stakeholder groups. Despite the progress made as the result of these discussions, S. 1285 was not marked up by the Senate Environment and Public Works Committee. Nonetheless, members of the Small Business Committee played an active role in the Superfund reform debate and worked with Senator Smith to refine S. 1285 in keeping with the small business agenda. In particular, members of the Committee were active in finding ways to protect the environment from hazardous waste sites faster and for less money, thus reducing the effects on small businesses involved in Superfund sites.

Committee action

Chairman Bond asked the General Accounting Office (GAO) to examine whether opportunities exist to reduce the costs of Superfund cleanups—and the cost to small businesses—while maintaining protection of health and the environment. The GAO report, published in July 1995, indicated that much of the health risk associated with Superfund sites would occur only if there was a change in land use at the Superfund site. It showed that there are two very different kinds of risks at Superfund sites: the "risk" to your health from being exposed to pollution, and the "risk" that something might happen in the future at a Superfund site that could trigger exposure.

Too often, the EPA obscures the difference between these types of risks by talking about Superfund risks as if they were all the same. In the first case, however, the Superfund site could be making people sick today, while in the second case, the Superfund site is definitely not making people sick today, but events in the future may create conditions that could affect people's health. Unfortunately, once a Superfund site enters the remedial action program, EPA has made little effort to coordinate its efforts at Superfund sites with current health risks. As a result, EPA resources often go to sites where the only risk is based on some hypothetical event in the future, while other sites languished where real exposures are having real effects on real people's health.

In a follow-up report issued in April, 1996, the GAO analyzed the results of so-called non-time-critical ("NTC") removals conducted under EPA's Superfund Accelerated Cleanup Model initiated by the Bush Administration in 1992. This report points out that significant time and money can be saved through the NTC removal process. GAO found that EPA can save 15–20 percent and two years of clean up time when it conducts NTC removals as an alternative to the traditional remedial action process at all but the most complex types of cleanups. GAO has shown that NTC removals use the same types of treatment and cleanup standards as remedial actions, but they do it faster and cheaper. Together, these reports show that greater use of NTC removals could allow EPA to provide the same degree of protection for public health at less cost to small business and others, and complete the cleanup in significantly less time. Alternatively, with equivalent resources, EPA could clean up more sites through a greater use of NTC removals.

E. Paperwork Reduction

Background

Government paperwork remains one of the biggest burdens for small business. One of the primary recommendations of the White House Conference of Small Business was to require federal agencies to achieve a reduction of the government's total paperwork burden by five percent each year for the next five years.

Legislation

The Paperwork Reduction Act of 1995 (PRA) went beyond the White House Conference recommendation of a five percent annual reduction and called for a 10 percent reduction in 1996 and 1997 and a five percent reduction in each of the following four years. Members of the Committee were very active in the debate and passage of the PRA. Following its enactment, the Committee took an active role in overseeing the implementation of the PRA.

Committee action

The Committee held an oversight hearing on June 5, 1996 in Washington, D.C. on the implementation of the Small Business Agenda, which highlighted PRA activities [See Hearings of the Committee].

F. SBREFA Demonstration Project

Background

Section 215 of SBREFA directs federal agencies to cooperate with states to develop joint small entity guidance that combines state and federal requirements. This section was designed to move federal agencies further down the road towards providing simplified and comprehensive guidance to small entities on their obligation under federal and state regulations.

Legislation

The Committee had language included in the FY 1997 VA, HUD and Independent Agencies Appropriations bill directing EPA to undertake a $1 million demonstration project to develop integrated compliance assistance packets as a means of further implementing section 215 of SBREFA. The key innovation of this demonstration is to look at all of the federal and state environmental regulations affecting a particular industry. The purpose of the demonstration project is for states and federal regulators to work together to develop an instructional packet describing proper reporting techniques and what a small business should do to comply with state and federal environmental laws, a video describing compliant and non-compliant situations, and simplified permits or substitute permits for a specific industry sector. The final product will provide small businesses in a selected industry sector with a single resource to consult in order to determine what the small business must do to comply with state and federal environmental laws. Selection of projects for this demonstration is to be carried out by the EPA in cooperation with state environmental regulatory officials and small business associations.

III. SMALL BUSINESS TAX ISSUES

A. INDEPENDENT CONTRACTOR

Background

The delegates to the White House Conference on Small Business as their top priority urged Congress to clarify the definition of an independent contractor. According to the delegates it is the most important issue plaguing small business today. The crux of the problem is that employers have a difficult time using a 20-factor common-law test for determining whether a worker is an employee or an independent contractor. Employers argue that the test is ambiguous, subjective and unpredictable. Meanwhile, the examining agents are resolving many of the cases in favor of employee status and are levying heavy penalties against the business owner.

Legislation

On March 13, 1996, Senator Bond, joined by Senator Nickles, introduced the Independent Contractor Tax Simplification Act, S. 1610. The purpose of the legislation was to set out a short list of simple, clear, and objective standards for determining who is an employee and who is an independent contractor. The bill was introduced because the small business community made it clear that the longstanding ambiguity in the current law was making it extremely difficult for owners to determine worker status and in some cases was stifling business expansion.

The bill sets out three questions to be asked in determining worker status. First, is there a written agreement between the parties? Second, does it appear the worker has made some investment such as incurring substantial unreimbursed expenses or being paid primarily on a commission basis? Third, does the worker appear to have some independence such as having his own place of business? In other words, if there is a written agreement between the parties and if basic investment and independence criteria are met, then the worker is an independent contractor. In addition, as under current law, the parties must properly report payments above $600, which ensures that all taxes properly due to the Treasury are collected.

Support for S. 1610 was significant with 31 Republican co-sponsors. As a result of this legislative effort, grassroots small business support, and a parallel effort on companion legislation (H.R. 1972), some improvements were made to the worker classification rules in the Small Business Job Protection Act of 1996. These changes, although helpful to some small business owners were not enough, and continued effort to change the law likely will occur during the 105th Congress.

Committee action

The Small Business Committee held hearings on the worker-classification issue on September 19 and 20, 1995 and April 23, 1996 [See Hearings of the Committee].

B. Self-Employed Health Insurance

Background

Another important issue facing small business during the 104th Congress was the deductibility of health-insurance costs for the self-employed. Beginning on January 1, 1994, the 25% deduction level expired, and according to the Treasury Department, this meant some 3.2 million self-employed taxpayers could not deduct any of their health-insurance premiums.

Legislation

In 1995, Congressional concern about the expiration of the provision led to passage of legislation making the deduction permanent and increasing the deduction amount of 30%. Later in 1995, Chairman Bond introduced an amendment to the budget reconciliation legislation to increase the deduction for the self-employed to 55% beginning January 1, 1996. The amendment passed unanimously. In conference, however, the provision was modified to provide a deduction of 35% in 1998 and 1999, 40% in 2000 and 2001, and 50% in 2002. Subsequently, the President vetoed that legislation.

The Chairman and Committee Members heard from constituents throughout the 104th Congress regarding this issue. The lack of parity, as compared with C corporations, and the rising cost of insurance made the issue subject to considerable debate. During the Committee's tax hearings, testimony was heard from small business owners and their representatives explaining the further need for change. Finally, near the end of the 104th Congress, as part of the Health Insurance Portability and Accountability Act, the deduction was increased, incrementally to 80% by 2006. Chairman Bond and other Members of the Committee supported the increase as a step in the right direction, in terms of leveling the playing field for small business entrepreneurs. Chairman Bond stated, however, that his effort to achieve tax parity would continue to be a top priority in the 105th Congress.

Committee action

The Small Business Committee held hearings on increasing the health-insurance deduction for the self-employed on September 19 and 20, 1995 and April 23, 1996 [See Hearings of the Committee].

C. Estate Taxes

Background

Estate tax relief was identified by many small business groups, including the National Federation of Independent Business and the delegates to the White House Conference, as a vital concern. Small business owners argue that the current law is forcing some to sell what otherwise would be a viable family business just so they can raise cash to pay the estate taxes. And the surviving family members are not the only ones affected by the tax—with the terminated business goes valuable jobs in the community. It is interesting to note that because sophisticated taxpayers often make charitable gifts and arrange their deductible transactions to reduce their taxable estates, the estate tax has its most damaging impact in the small, family business sector, but it raises little net revenue for the federal government.

Legislation

On July 28, 1995, Senator Dole joined by 31 co-sponsors, introduced The American Family Owned Business Act, S. 1086. The bill would eliminate the estate tax for each decedent's interest in a family-owned business worth up to $1.5 million. If the decedent's family-owned business assets exceed $1.5 million, then one-half of the excess would be excluded from the estate. The bill received tremendous praise and grassroots support from small business owners throughout the country. The Small Business Committee heard testimony on the importance of the issue from several witnesses, including the Missouri Farm Bureau and the National Cattlemen's Association.

A modified version of S. 1086, which would have significantly reduced the estate-tax when a family-owned business passes from one generation to the next, was included in the Balanced Budget Act, which was vetoed by the President. Some small business owners, including delegates to the White House Conference have recommended complete repeal of the estate tax.

Committee action

The Small Business Committee held hearings on estate tax reform September 19 and 20, 1995 [See Hearings of the Committee].

D. Home-Office Deduction

Background

An important issue identified by home-based business owners and by the National Association for the Self-Employed is the need to restore the existing law concerning the home-office deduction. A 1993 Supreme Court decision, *Commissioner* v. *Soliman,* significantly narrowed the home-office deduction for entrepreneurs who perform their work outside of their homes, but whose office are in their homes. For example, those losing the deduction include plumbers, electricians, homebuilders, veterinarians, and travel agents.

Legislation

In response to the need for change, Senator Hatch introduced the Home Office Deduction Act, S. 327, which provides reform of the home-office deduction in light of the 1993 Supreme Court decision *Commissioner* v. *Soliman*. The bill would restore the deduction to thousands of business owners. Rather than meeting the narrow criteria set out in the *Soliman* decision, the bill would allow the deduction if the home office is the sole location where essential administrative or management activities are conducted by the taxpayer on a regular basis.

Small business owners argue that the *Soliman* decision is shortsighted and ignores the way business is done today, especially in light of the development of new technologies. The changes provided by S. 327 would benefit certain parents who are raising children while working at home as well as individuals laid off as a result of corporate downsizing. Chairman Bond and Senator Lieberman were the only two Members of the Small Business Committee to co-sponsor S. 327. While the legislation did not pass during the 104th Congress, it will remain a top priority for home-based business owners and the Committee for the 105th Congress.

Committee action

The Small Business Committee held hearings on restoring the home-office deduction on September 19 and 20, 1995 and April 23, 1996 [See Hearings of the Committee].

E. Equipment Expensing

Background

Throughout the 104th Congress, the small business community supported an increase in the provision of the tax law that permits small businesses to expense certain purchases of equipment. Generally, taxpayers must recover the cost of business property placed in service over time through depreciation. The law provides that in lieu of depreciation, small businesses may deduct up to $17,500 of the cost of qualifying property placed in service.

Legislation

The Balanced Budget Act of 1995 included a provision to increase the equipment expensing limitation to $25,000 over a seven-year period. The President vetoed the legislation, and as a result, small business lost the chance for improved cash flow and the opportunity for expansion that this change would have provided.

In June of 1996, Chairman Bond sent a letter to Senator Roth, Chairman of the Finance Committee, outlining small business tax priorities and urging the Finance Committee to consider, among other things, an increase in the equipment expensing provisions during the markup of the Small Business Job Protection Act. Senator Bond wrote that an increased deduction would improve cash flow and permit the additional hiring that often accompanies business expansion. In addition, an increase would help remove some of the complex, annual depreciation calculations from compliance burdens on small enterprises.

When the Small Business Job Protection Act was enacted in the Summer of 1996, it included an increase to the equipment expensing provision that raises the deduction limitation incrementally to $25,000 over several years. Some small business groups contend that this increase is too small and would have preferred the deduction be raised to $50,000.

Committee action

The Small Business Committee held hearings on the equipment expensing issue on September 19 and 20, 1995 [See Hearings of the Committee].

F. Pension Simplification

Background

Historically, the high cost of establishing and maintaining pension and profit-sharing plans has been a major barrier for small business. During Committee hearings on the issue John Galles, President National Small Business United, testified that the "complex and costly burdens our pension rules place on small businesses wishing to offer retirement plans for the benefit of their employees too often frightens and discourages those businesses from starting or even maintaining such plans."

Legislation

The 104th Congress went a long way towards correcting this problem with the development of the Savings Incentive Match Plan for Employees (SIMPLE). SIMPLE plans can be adopted by employers with 100 or fewer employees who do not maintain another employer-sponsored retirement plan. Small businesses like SIMPLE plans because, much of the complexity of traditional retirement plans is removed, and thus they can offer retirement plans to employers at a reduced cost. SIMPLE plans will help encourage people to take responsibility for their own retirement, making it easier for small businesses to participate in the process.

In 1995, the President vetoed provisions included in the Balanced Budget Act, that would have established the SIMPLE Plan. Eventually, the SIMPLE Plan was enacted in 1996 as part of the Small Business Job Protection Act. The Act also contained a number of other changes that simplified the existing pension laws, which will further encourage and enable small businesses to offer retirement benefits to their employees.

Committee action

The Small Business Committee held hearings on pension reform and simplification on September 19 and 20, 1995 [See Hearings of the Committee].

G. Capital Gains

Background

Capital gains tax relief was identified as an important issue to both small and large businesses during the 104th Congress. Some businesses viewed a reduction in the rate as a way to unlock built-up asset values and make money available for new investment. There was also support for a second, lower rate generated from investments in small businesses as an incentive to attract newly available capital into the small business sector. In addition, there was support for the deferral of taxes on small business capital gains if the gain is reinvested in another small business to permit successful entrepreneurs to create a new success story.

Legislation

During the first session of the 104th Congress, Senators Hatch and Lieberman introduced The Capital Formation Act, S. 959, which embodied this tiered approach. The Senators testified before the Small Business Committee regarding their bill, which received significant support with 44 co-sponsors. Ultimately, the President vetoed provisions, included in the Balanced Budget Act to reduce the capital-gains tax rate and to provide for a targeted incentive for investments in small growth companies. Continued efforts towards capital gains relief will remain a high priority for the 105th Congress.

Committee action

The Small Business Committee held hearings on the capital-gains tax on September 19 and 20, 1995 [See Hearings of the Committee].

H. TAXPAYER BILL OF RIGHTS 2

By unanimous consent, the Senate passed the Taxpayer Bill of Rights 2 of July 11, 1996, and it was signed into law by the President on July 20, 1996 (Pub. L. 104–168), which makes a number of administrative and statutory changes with respect to the rights of taxpayers in relation to the IRS. In particular, the legislation allows certain taxpayers who have prevailed against the IRS in court to shift the burden of proof to the IRS when seeking attorney's fees. The legislation also increases the amount of attorney's fees that taxpayers may recover from $75 per hour to $110 per hour, and it raises the amount of actual direct economic damages that a taxpayer may recover from $100,000 to $1 million.

The Taxpayer Bill of rights 2 also expands the current interest abatement rules to allow for abatement when IRS employees cause unreasonable mistakes or delays, for which the taxpayer should not bear the burden of additional interest. In addition, the legislation establishes a taxpayer advocate to replace the existing ombudsman. The new advocate is responsible for assisting taxpayers in resolving difficulties with the IRS. The advocate will also help to identify problems with the tax system and assist the congressional tax-writing committees in correcting them.

Two other changes made by the legislation will help taxpayers on the administrative front. First, the legislation prohibits temporary, proposed, or final regulations from being implemented earlier than the date that adequate notice of the regulation is given to the public. This bar against retroactive regulation will prevent taxpayers from burdens imposed by new regulations before there is adequate notice of the new requirements. Second, the Taxpayer Bill of Rights 2 allows taxpayers to use private delivery services for sending tax documents to the IRS, and it permits taxpayers to rely on the postmark from the delivery service as evidence that the document was filed in a timely manner.

I. MEALS AND ENTERTAINMENT

Background

The second highest priority of the delegates to the White House Conference on Small Business was increasing the deduction for business meal and entertainment expenses. Small businesses often use the business lunch to help generate new clients or customers and to maintain relationships with existing colleagues. Frequently these lunches are in lieu of spending significant amounts on advertising. The Committee heard testimony that the deduction should be raised from its current 50% level, especially since advertising is a 100% deductible expense.

Legislation

Senator Inouye introduced S. 216, which would increase the meal and entertainment deduction to 80% from the current level of 50%. Despite the popularity among many small business groups, the legislation did not receive widespread support and was not passed during the 104th Congress.

Committee action

The Small Business Committee held hearings on restoring the meals and entertainment deduction on September 19 and 20, 1995 [See Hearings of the Committee].

J. Payroll Tax Relief

Background

Many small businesses pay more in payroll taxes than they do in income taxes. In addition, under current law taxpayers pay income tax on their social security tax, which effectively is a tax on a tax. The payment of both income and payroll taxes is especially difficult for the self-employed. The issue was highlighted during the Committee's home-based business hearing when Dianne Floyd Sutton testified that "the self-employed are double taxed on social security—Paying both the employer's and the employee's share, 15.3%. And that comes off gross revenue, too, before even a nickel of deductions for expenses or for income taxes."

Legislation

The small business community and Committee staff followed legislation introduced by Senator Ashcroft, The Working Americans Wage Restoration Act, S. 1741, which would allow workers to deduct their payroll taxes. The legislation would allow both the self-employed and employees to subtract from their gross income the Social Security tax they pay (6.2% of their income). The significant burden of payroll taxes were discussed during the Home-Based Business hearing at which the Committee was reminded that the 15% that the self-employed have to pay is substantial. Some believe that the bill's enormous cost could not be justified as consistent with the overriding effort to balance the budget. The measure was not considered by he Senate during the 104th Congress.

Committee action

The Small Business Committee held hearings on payroll tax relief on April 23, 1996 [See Hearings of the Committee].

K. S Corporation Reform

Background

Throughout the 104th Congress, there was significant support for S Corporation Reform. S corporations typically are small businesses and are frequently family owned. These small business owners indicated that certain restrictions within the law were hindering an S corporation's ability to raise funds for growth and the creation of new jobs. Constituents argued that certain changes in the law could improve business opportunities for the 1.9 million small businesses operating as S corporations across America.

Legislation

Senator Hatch introduced the S Corporation Reform Act, S. 758, which would simplify many of the outdated, unnecessary, and complex tax rules that small businesses must follow. The bill would expand access to capital in a variety of ways, including increasing the number of permitted shareholders. In 1995, President Clinton vetoed provisions included in the Balanced Budget Act that would have provided S Corporation Reform. In 1996, changes and improvements to the law were made as part of the Small Business Job Protection Act.

L. Tax Reform Debate

The tax reform debate was an important topic to all taxpayers during the 104th Congress, including small business. Many closely followed the National Commission on Economic Growth and Tax Reform, chaired by former Congressman and Secretary of Housing and Urban Development Jack Kemp. In January of 1996, the Commission released its report, which contained recommendations on reforming the U.S. tax code. Tax reform will have significant consequences for all sectors of the economy.

The Small Business Committee spent a great deal of time during the 104th Congress examining the business and public-policy issues that will determine how small business can help stake out our country's path for the future. Tax reform should drive economic growth, encourage entrepreneurship, and promote savings while providing relief to small businesses, our nation's primary source of new jobs and economic growth. The debate will continue in the 105th and subsequent Congresses, and the voice of small business will continue to play an important role.

M. The Consumer and Main Street Protection Act

Senator Bumpers introduced legislation to create a level playing field between retailers and direct marketers regarding the collection of sales and use taxes. Currently, direct marketers are exempt from such tax collection requirements if they have no physical presence in the state where products are shipped. Because retail establishments are required to collect sales taxes as a matter of state law, they are placed at a competitive disadvantage vis-a-vis mail-order companies. Senator Bumpers' legislation, The Consumer and Main Street Protection Act of 1995, S. 545, would resolve this issue by allowing states to require use tax collection on direct-market products.

S. 545 is also designed as a consumer protection measure because consumers remain liable for use taxes, even though direct marketers may not collect the taxes. In recent years, thousands of consumers have been assessed after the fact for unpaid use taxes on goods purchased via direct marketing, and interest and penalties are often charged in the assessment.

S. 545 was referred to the Senate Finance Committee, but did not see further action.

N. Electronic Tax Payment Requirement

Chairman Bond and Senator Bumpers sent a joint letter to Treasury and IRS officials urging a delay in implementation of the Electronic Federal Tax Payment System (EFTPS) for small businesses. The letter noted that great confusion existed among small businesses regarding the new requirements and that more information was needed before the new system became effective. IRS Commissioner Margaret Richardson subsequently agreed to waive penalties for six months on small businesses using EFTPS and to provide more detailed information about the system.

Following the IRS' penalty waiver announcement, provisions were added to the Small Business Job Protection Act that delay the implementation of EFTPS for small businesses until July 1, 1997. This delay was included to give small firms additional time to learn about the system and to enroll prior to having to make their tax payments electronically.

O. Extension of Expiring Provisions

As part of the Small Business Job Protection Act several expiring tax provisions important to small business were extended. For example, the research and development tax credit, employer-provided educational assistance program, and contributions of stock to private foundations were all extended. Although the Small Business Committee did not hear witness testimony regarding the extenders, passage of the legislation was followed with interest and support.

IV. WORKPLACE ISSUES

A. OSHA Reform

1. LEGISLATIVE REFORM

Background

Delegates to the White House Conference on Small Business recommended legislative changes that encourage a non-adversarial, supportive relationship between the Occupational Safety and Health Administration (OSHA) and small businesses. The delegates suggested legislation that allows OSHA to assist and cooperate with small employers that are trying to comply voluntarily with OSHA's regulations.

Legislation

The Senate Regulatory Relief Task Force sent a letter to Senator Kassebaum, Chairman of the Labor Committee, in October 1995, encouraging her to draft legislation that would replace OSHA's current system with a cooperative, partnership approach. The Task Force suggested incentives for voluntary compliance, more opportunities for consultation between OSHA and employers, decreased penalties for non-serious violations, and changes in the way OSHA conducts inspections.

Senators Gregg and Kassebaum introduced the Occupational Safety and Health Reform and Reinvention Act, S. 1423, in November, 1995. The Act seeks to refocus OSHA on its primary mission, improved workplace safety, while simultaneously leveraging the agency's scarce resources on the most dangerous work sites. The legislation permits OSHA inspectors to issue warnings in lieu of citations for non-serious violations and reduces fines for paperwork and other non-serious citations. In addition, the bill provides positive incentives for employers to address occupational safety on their own. Businesses with effective health and safety programs or those that utilize certified, third-party safety consultants will be exempt from regular OSHA inspections and will receive reduced penalties for citations. The bill also clarifies that employee participation on company safety committees does not violate the National Labor Relations Act.

President Clinton threatened to veto S. 1423 before it was considered by the Labor Committee, but did not offer any alternative legislation. The Gregg/Kassebaum bill was marked-up by the Labor Committee in March 1996. The Committee reported out the legislation, but it was not considered by the full Senate.

Additional OSHA reform bills introduced in the 104th Congress included: H.R. 1834 (Rep. Ballenger), H.R. 3234 (Rep. Ballenger), S. 592 (Sen. Hutchison), S. 526 (Sen. Gregg).

2. WORKPLACE VIOLENCE GUIDELINES

OSHA released proposed guidelines for workplace violence prevention programs at night retail establishments on April 5, 1996. The Republican members of the Committee sent a letter in June 1996 to Joseph A. Dear, Assistant Secretary of OSHA, expressing concern about OSHA's intentions regarding enforcement of the guidelines. The letter stated that OSHA often uses its authority under the General Duty Clause of the Occupational Safety and Health Act to cite employers for failing to follow guidelines. Because of this pattern, OSHA guidelines can act as the functional equivalent of regulations from the perspective of small business owners. The letter also questioned whether using guidelines to achieve specific compliance activities reflects the cooperative and consultative approach to regulating small business described at the White House Conference on Small Business and included in the Small Business Regulatory Enforcement Fairness Act (SBREFA). By issuing a guideline rather than promulgating a rule, OSHA avoids any analysis of the economic impact of the guideline on small businesses and is not required to comply with the Regulatory Flexibility Act.

Assistant Secretary Dear responded to the letter by assuring the Committee that the guidelines would not be enforced like traditional regulations. He stated that the guidelines are intended as a compilation of the "best practices" regarding workplace violence that employers will not be forced to follow. The letter referenced the Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers and the subsequent memorandum sent to OSHA's Regional Administrators clarifying that the guidelines were for educational purposes only and that no citations would be issued based upon them. Secretary Dear stated that OSHA would try to emphasize in the final version that the guidelines are not intended to have the force and effect of rules.

3. ERGONOMICS

The Committee also studied OSHA's development of a rule on ergonomic injuries. The small business community was concerned about the potential cost of complying with a broad ergonomics rule. These organizations and their members argued that OSHA did not have credible scientific studies to show that ergonomic injuries are due to workplace activities. These groups also pointed to the disagreements among scientific experts about the proper treatment of ergonomic injuries and the cost of a rule.

The FY 1996 appropriations legislation prohibited OSHA from issuing a proposed or final ergonomics rule. OSHA was given the authority to continue researching the ergonomics rule and to conduct peer review activities. The FY 1997 appropriations bill did not contain a similar prohibition on issuing an ergonomics rule.

4. HAZARD COMMUNICATION

In May 1995, President Clinton, as part of the government reinvention process, tasked OSHA to look at four issues related to OSHA's Hazard Communication Standard. The President requested the National Advisory Committee for Safety and Health (NACOSH) to make recommendations on simplifying material safety data sheets, reducing the amount of required paperwork, improving the effectiveness of worker training, and revising enforcement policies to focus on the most serious hazards. All of these issues have a significant impact on small business, and, therefore, the Committee has taken a direct interest in potential policy changes being considered by the Agency.

The Committee has assisted small business organizations as well as small business owners in expressing their concerns and recommendations to the NACOSH group. Additionally, the Committee has arranged for small business owners to meet with senior OSHA officials on hazard communication issues.

In September, 1996, NACOSH issued their report with recommendations to streamline the Hazard Communication Standards methods of downstream communication and enforcement policy. This report is considered advisory only, and the NACOSH recommendations will now be considered by the Agency. The Committee will continue to monitor the policy considerations of the Agency to ensure that small business interests are considered and integrated into final agency action.

B. LABOR-MANAGEMENT RELATIONS

1. UNION SALTING

Background

The Committee examined statements received from numerous small contracting businesses that have experienced union "salting" campaigns. "Salting" is a technique used by unions in organizational and other types of campaigns typically involving businesses in the construction industry. Union agents, or "salts," apply for jobs with non-union employers. If hired, the salt attempts to convince the employees to join the union and tries to generate unfair labor practices against the employer. If the salt is not hired, he or she files an unfair labor practice complaint with the National Labor Relations Board (NLRB) alleging that the employer failed to hire the salt because of union affiliation.

Several small businesses characterized the salting campaigns they had experienced as unrelated to organizing. These small employers stated that the unions were often not interested in organizing and did not file election petitions with the NLRB, but instead used their salts to generate unfair labor practices and to call other federal agencies such as OHSA and the Environmental Protection Agency (EPA) with frivolous complaints. These businesses believe that the true goal of some salting campaigns is to destroy non-union businesses to reduce competition for union contractors. For example, a small contractor in Missouri said that at the instigation of a union, the NLRB had filed approximately 120 unfair labor practices claims against him during a two year period. Of these 120 unfair labor practices, the NLRB found merit in only two cases. This small employer spent over $55,000 on legal expenses to defend against the charges. The union did not at any time during the campaign file a petition for an election.

Legislation

Two bills designed to remedy the salting problem were introduced. Rep. Fawell introduced the Truth in Employment Act, H.R. 3211, on March 29, 1996. The bill establishes that an employer does not have to hire an applicant who is seeking employment to further the goals of the union. Senator Gorton introduced the Senate companion bill, S. 1925, in June 1996. The Gorton bill states that an employer does not have to hire anyone whose "primary goal" is representing the union in an "organizational struggle."

The Committee planned a hearing to explore the impact of salting campaigns on small businesses. The Committee invited five small businesses to testify about their experiences with salting and was also to hear from four labor law experts. The hearing was postponed, and there was insufficient time to reschedule it prior to the conclusion of the 104th Congress.

2. SINGLE FACILITY BARGAINING UNITS

Background

The NLRB proposed a rule that would change the way the Board evaluates the appropriateness of collective bargaining units. Currently, the Board looks at a variety of factors to determine whether or not employees share a "community of interest." To be in the same collective bargaining unit, employees must have similar interests in terms of wages and benefits so that the union can negotiate a collective bargaining agreement that is beneficial to all of the employees in the unit. The "community of interest" standard has been used by the NLRB for over 40 years and allows the bargaining unit to consist of several facilities operated by the employer or single facilities.

The NLRB's proposed rule would establish a presumption that employees at a single location constitute the appropriate bargaining unit as long as there are 15 or more employees at the location, no other work site of the employer is within one mile of the requested locations, and at least one supervisor is present at the site. The single facility would be rejected as an appropriate bargaining unit only in "extraordinary circumstances."

The Committee heard from numerous small businesses that were concerned about the NLRB's proposed rule. Those businesses argued against another "one-size-fits-all" rule that applies to businesses of all sizes and emphasized that in a business environment including phones, faxes, and computers, centralized management of several facilities was increasingly commonplace. Small businesses expressed concern about the possibility of having several facilities in one area that would be governed by different unions and pay scales. For example, a franchise owner with four locations in the same area would have to show "extraordinary circumstances" in order to include employees from all of the locations in the same bargaining unit. Under the proposed rule, these employees could be in different bargaining units even when employment and management policies were centralized.

Legislation

The House and Senate FY 1996 appropriations bills for the Department of Labor included a provision prohibiting the NLRB from using appropriations to further develop the single-facility rule. The provision was also included in the continuing resolution that provided funding for the Department of Labor for FY 1997.

Chairman Bond and 37 other Senators, including five other Committee members, sent a letter to William Gould, Chairman of the NLRB, in March, 1996 urging the Board to exercise caution in promulgating the new rule. The letter questioned the need for the rule given that litigation regarding the appropriateness of bargaining units has fallen in recent years. In addition, the letter pointed out the Board had only three members confirmed by the U.S. Senate and one recess appointee serving at the time of the proposed rule.

Chairman Gould answered the letter on April 1, 1996, stating that litigation on the appropriateness of bargaining units had remained steady rather than declining. Chairman Gould explained that a finding that a single facility is appropriate has always been available under the law and that the proposed rule simply sets forth the decisive factors for finding that single location units are appropriate. Chairman Gould concluded by emphasizing the exceptions from the single facility rule are provided in "extraordinary circumstances" and that the proposed rule is an attempt to address the need for flexibility.

C. Fair Labor Standards Act

1. COMPENSATORY TIME OFF

Background

The Committee heard from small businesses and employees about increased flexibility in working conditions. Employers and employees expressed interest in flexible schedules that would allow them to spend more time with their families and to have more compensation options.

Several bills were offered during the 104th Congress that would allow employees to choose compensatory time off rather than overtime pay. Currently, the Fair Labor Standards Act (FLSA) requires employers to pay eligible employees at an hourly rate of 1.5 times their regular pay for any hours over 40 worked in a week. As a result, employers are unable to permit employees to work extra hours during one week and take the time off in another week. For example, an employer would be unlikely to allow an employee to work 48 hours one week so that he or she could take a day off the following week because the employer would have to pay eight hours of overtime for this first week.

Legislation

Senator Ashcroft introduced the Work and Family Integration Act, S. 1129, in August 1995. Representative Ballenger introduced the Compensatory Time for All Workers Act, H.R. 2391, in September 1995. The legislation allows employers to offer comp-time programs. Employees could choose to participate in the program and receive time off rather than overtime pay. Both bills allows employees to accrue up to 240 hours of compensatory time off and to cash out any accrued time with 30 days notice. Employees may use earned compensatory time for any purpose with reasonable notice to the employer. Requested use of compensatory time can be denied by the employer only if the employee's absence is unduly disruptive to the workplace. Both bills are based on the compensatory time-off programs programs that have been available to federal government employees since 1945 and to state and local government employees since 1985.

The Ballenger legislation passed the House on July 26, 1996 by a vote of 225–195. The Senate did not consider the Ashcroft bill. President Clinton characterized the Ballenger bill as a "poison pill" when it was discussed as an attachment to the legislation increasing the minimum wage and Secretary of Labor Robert Reich recommended that President Clinton veto the Ashcroft and Ballenger bills. President Clinton announced his own proposal for "employee choice flex time," which would allow employees to accrue up to 80 hours of compensatory time and allow a cash out with two weeks notice regardless of any disruption to the workplace. Part-time, seasonal, and temporary workers would not be permitted to participate in the program, and the Secretary of Labor could exclude other groups of workers. The Clinton proposal would sunset in five years.

Committee action

The Committee studied the comments received from many small businesses interested in offering their employees compensatory time off. These employers explained that small businesses are often unable to offer their employees the benefit packages larger businesses are able to offer, but they can offer flexibility. That flexibility is, however, limited by the current restrictions of the FLSA.

2. INSIDE SALES

Background

The Fair Labor Standards Act provide an exemption from overtime pay for outside salespeople. The FLSA also provides an overtime exemption for inside salespeople in the retail industry if they are paid more than 1.5 times the minimum wage and more than half of their compensation is paid in commissions.

Legislation

In March, 1995, Rep. Fawell introduced H.R. 1226, a bill that would allow all businesses to use the exemption for inside salespeople. The Senate companion bill, S. 2026, was introduced by Sen. Faircloth in August 1996. Neither bill was considered by the House or Senate.

Committee action

The Committee received correspondence from several small businesses interested in the FLSA's inside-sales provision. Small wholesalers told the Committee that they were at a competitive disadvantage relative to retail establishments that could utilize the exemption for inside salespeople. In addition, small businesses explained that the distinction between inside and outside salespeople was more difficult to define today than it was in 1938 when the FLSA was passed because of computers, phones, and faxes. One business owner illustrated the problem by saying that he could save money by putting his inside salespeople on a bus and driving them around so that they would be outside salespeople and that his inside and outside salespeople essentially performed the same jobs. Small employers also explained that their sales employees want to be exempt from overtime provisions because they want to be able to offer their customers excellent service and increase their sales quotas.

3. MINIMUM WAGE

As Congress began considering a federal minimum wage increase, the Committee gave serious consideration to the potential impact of such an increase on America's small businesses. Chairman Bond wrote in a Dear Colleague letter on May 21, 1996, that the vast majority of new jobs created during the past decade were due to small businesses and that protection from federal mandates would be necessary to maintain this growth.

Exemptions from the federal minimum wage had been utilized in the past for small businesses. Prior to 1989, retail and service establishments grossing under $362,500 were completely exempt from the federal minimum wage and overtime provisions. When

Congress raised the minimum wage in 1989, the exemption was raised to $500,000 and applied to all types of businesses rather than only retail and service establishments. Unfortunately, Congress failed in the 1989 amendments to amend a portion of the minimum wage law that covers individual employees. As a result, no business with employees engaged in interstate commerce is exempt despite Congress' clear intentions to do so in 1989.

In 1990 and 1991, Senator Bumpers, the ranking member on the Committee, introduced legislation that would have effectuated Congress' intent by exempting small businesses grossing less than $500,000 from the 1989 increase. The bill had 48 co-sponsors, 26 Republicans and 22 Democrats, but it was never passed.

Philip Lader, Administrator of the Small Business Administration, suggested to Secretary of Labor Robert Reich in March 1995, that America's smallest businesses be exempted from any minimum wage increase. Mr. Lader stated that an exemption would help alleviate the need for firms at the margin to fire workers and would compensate small employers for the costs they incur by hiring unskilled workers. In the letter, Mr. Lader explained that a two-tiered minimum wage system serves two important public policy goals—promoting small businesses and preserving jobs.

Chairman Bond sent a letter to President Clinton in June 1996, asking the President to support an exemption from the proposed increase for small businesses grossing under $500,000. Chairman Bond reviewed the legislative history of the small business exemption and cited statements made during the 1989 debates expressing Congress' intent to exempt small businesses from the increase. Chairman Bond explained that the provision would exempt small businesses grossing under $500,000 from the increase in the minimum wage, thereby maintaining the status quo for small business. President Clinton responded with a letter to Majority Leader Lott characterizing a small business exemption as a "poison pill" that would guarantee a veto.

Chairman Bond offered an amendment on August 6, 1996 to H.R. 3448, the minimum wage bill passed by the House, which provided for an increase in the minimum wage to $4.75 beginning January 1, 1997 and another increase to $5.15 beginning January 1, 1998. Under Chairman Bond's amendment, small businesses grossing under $500,00 would have been exempt from the increase and would have continued to pay $4.25.

The Bond amendment failed by a vote of 46 to 52. As a result, businesses of all sizes began paying the increased rate of $4.75 on October 1, 1996 and will begin paying $5.15 on September 1, 1997.

D. TEAM Act

Background

The Teamwork for Employees and Management Act of 1995, S. 295, was introduced by Senator Kassebaum on January 10, 1995. The TEAM Act amended Section 8(a)(2) of the National Labor Relations Act (NLRA), which prohibits employer-dominated labor organizations. The NLRA defines a labor organization as a group of employees that discusses terms or conditions of employment with management. The National Labor Relations Board (NLRB) and courts have interpreted “terms and conditions of employment” to include nearly all aspects of employment. Thus, efforts by non-union employers to involve teams of employees in such areas as safety, productivity, quality, and working conditions have increasingly been found to be illegal labor practices. The NLRB’s interpretation has also deterred other employers from using or expanding employee involvement initiatives.

The TEAM Act would allow employee involvement so long as the employees involved do not have the power to enter into or negotiate collective bargaining agreements. The Act establishes that it is not an unfair labor practice for employers and employees to participate in a group that addresses “matters of mutual interest” as long as the group does not have the power to negotiate a collective bargaining agreement. Thus, employers and employees would be able to form teams or other types of entities to talk about issues like safety, productivity, and quality that may implicate terms and conditions of employment.

The Committee heard from many small business owners that wanted to use employee involvement entities, but felt constrained by section 8(a)(2) as interpreted by the NLRB and the courts. These employers explained that in a small business, the delineation between manager and employee is not always clear because of smaller staffs and overlapping responsibilities. For example, the owner of a small business is more likely to turn work scheduling over to a team of employees because resources for a personnel director are not available. Small business owners also explained that they did not have the resources to consult a labor law expert each time they wanted to try something new. Unless the small business owner had read each case decided by the NLRB, he or she would be unable to determine whether or not employee teams for specific issues are permissible.

Legislation

The TEAM Act, introduced in the House as H.R. 743 passed by a vote of 221–202 on September 27, 1995. The Senate version of the bill, S. 295, was reported favorably out of the Senate Labor and Human Resources Committee on April 14, 1996. The Senate ultimately considered and passed the House version, H.R. 743, by a vote of 53–46 on July 10, 1995. President Clinton vetoed the Act on July 30, 1996.

E. DAVIS-BACON ACT

Background

The Davis-Bacon Act governs all construction contracts between business owners and the federal government. The Act requires that employers pay the “prevailing wage” in the area to employees working on federal contracts. The prevailing wage is calculated through data collected from employers and typically approaches the wage earned by union workers.

Small business representatives recommended repeal of the Davis-Bacon Act at the White House Conference on Small Business. The Act put small and minority firms at a disadvantage because they cannot afford to pay the higher wages and because of complicated federal contracting procedures. The Act discourages employment of inexperienced workers because the payment of high wages encourages employers to hire the most skilled workers even if their skills are not necessary for each job. In addition, the Act results in government waste. The Congressional Budget Office estimated in 1983 that repealing the Act would save $75 million to $1 billion in federal construction expenses each year.

Legislation

The Committee monitored legislation concerning the Davis-Bacon Act because of its importance to the small business community. Senator Kassebaum introduced the Davis-Bacon Repeal Act, S. 141, in January 1995. The Labor Committee held a hearing on the repeal bill, but it was not marked-up or considered on the Senate floor. Senator Hatfield introduced the Davis-Bacon Reform Amendments of 1995, S. 1183, in August 1995. The Hatfield bill raised the threshold for Davis-Bacon coverage and clarified provisions on leased facilities, trainees and helpers, and contract splitting. The Hatfield bill was not considered by the Labor Committee or the Senate. President Clinton has promised to veto any bill that repeals the Act.

F. Family and Medical Leave Act

Background

The Family and Medical Leave Act (FMLA) was enacted on February 5, 1993, and requires employers with 50 or more employees to allow each employee 12 weeks of unpaid leave for the birth or adoption of a child or because of the serious health condition of the employee or a parent, spouse or child. Intermittent leave is available if it is medically necessary or if the employer and employee reach an agreement. Employers must maintain the employee's health insurance during the leave and reinstate the employee to an equivalent job with the same pay and benefits once the leave is over.

Legislation

Senator Dodd and Representative Schroeder introduced S. 1896 and H.R. 3704, respectively, to expand the FMLA. The legislation lowers the coverage threshold from 50 employees to 25 employees. Employees would be entitled to a "parental involvement leave" of up to four hours per month or total of 24 hours per year. The leave could be used for school or community activities involving the employee's child or foster child. The Senate bill was not considered by the Labor Committee or voted on by the full Senate.

Committee action

The Committee reviewed statements from several business owners about the FMLA. The experiences of these employers and their employees were mostly positive, but several suggestions were made regarding the administration of the Act. Several employers reported that the Department of Labor's definition of "serious health condition" is so broad that common conditions such as colds and ear infections could result in qualification for FMLA leave. Employers also expressed concern about the availability of intermittent leave. Because employees can take up to 12 weeks of leave in one hour increments, FMLA leave becomes difficult to track and can be disruptive to the workplace.

V. ACCESS TO CAPITAL: SMALL BUSINESS ADMINISTRATION PROGRAMS

Small business is the engine that drives the U.S. economy. Without the extraordinary growth and success of small businesses over the past decade, the U.S. economy would have failed to expand. Ninety-nine percent of all businesses in the United States are small, and 85% employ fewer than 20 people. They provide jobs to 54% of the private workforce. Small businesses also provide about 67% of initial job opportunities and are responsible for most of the initial on-the-job training in basic skills.

One of the greatest challenges facing many small businesses is the availability of capital to support on-going business activities and to fund business start-ups and growth. Traditional sources of capital for businesses, such as banks and large venture capital firms, historically have been reluctant to make debt and investment capital readily available to small businesses at reasonable rates and terms. To respond to this void, the Committee on Small Business devoted special attention in 1995 and 1996 to studying the effectiveness of critical Small Business Administration (SBA) finance programs that were initially created to fill this void. The result was a series of investigative hearings that produced major bills, introduced by Senator Bond, that reformed SBA's finance programs. These key legislative measures received unanimous bipartisan support in the Senate and were signed into law by the President.

A. 7(a) Guaranteed Business Loan Program

Background

The 7(a) Guaranteed Business Loan Program is designed to encourage banks and SBA-licensed non-bank lenders to make long-term credit available to small businesses. This is SBA's most popular program. In FY 1996, 45,845 loans totaling $7.7 billion by banks and non-bank lenders to small businesses were guaranteed by SBA under the 7(a) program; in FY 1995, 55,596 loans totaling $8.3 billion were guaranteed by SBA.

Legislation

The Small Business Lending Enhancement Act of 1995

During a series of hearings before the Committee on Small Business in early 1995, it became evident that the Committee needed to enact legislation to make more 7(a) business loans available to fund small business start-ups and to support small business growth. In response to this finding, in June 1995 Chairman Bond introduced the Small Business Lending Enhancement Act of 1995, S. 895. This bill reduced the credit subsidy rate for the 7(a) program from 2.68% to 1.06%, which made it possible for Congress to approve and fund significant program growth to meet borrower demand. S. 895 was approved unanimously by the Committee on Small Business and the full Senate. After a conference with the House of Representatives, it was signed into law on October 13, 1995, as Public Law 104–36.

Bond-Bumpers comprehensive substitute amendment to H.R. 3719

In early 1996, the SBA notified Congress that projected program losses for the 7(a) business loan program were higher than previously presented. Actual recoveries on defaulted loans were 44%, not 55% as claimed earlier by the Agency. In addition, SBA and the Office of Management and Budget insisted that the default rate would continue at a level of over 17% for FY 1994 through FY 1997, a significant increase above the default level of 10.5% for FY 1992 and 9.5% for FY 1993. As a result, these persistently high default rates have led to increased fees for borrowers and lenders making capital more expensive for small business borrowers.

In August and September 1996, Chairman Bond and Senator Bumpers, the Committee's ranking member, drafted a comprehensive substitute amendment to the House-passed Small Business Programs Improvement Act of 1996, H.R. 3719. Their substitute Amendment included program reforms to improve the safety and soundness of the 7(a) business loan program while allowing the program to grow and meet the borrowing needs of small businesses.

The Bond-Bumpers Substitute Amendment strengthens the requirements to allow SBA lenders to sell off the unguaranteed portion of 7(a) loans by directing SBA to promulgate new regulations mandating that each lender maintain a loss reserve on loans sold on the secondary market. In addition, this bill directs that SBA-licensed Preferred Lenders and Certified Lenders be allowed to have a direct roll in liquidating defaulted 7(a) loans in order to improve recoveries from the collateral pledged from the loan.

H.R. 3719 requires SBA to create a management data base so that SBA, the Congress, and outside parties can begin to understand the reasons for failed 7(a) loans. H.R. 3719 was included as part of the FY 1997 Omnibus Consolidated Appropriations Act and was signed into law on September 30, 1996, as Public Law 104–208.

B. 504 Certified Development Company Program

Background

This SBA-backed small business finance program is designed to stimulate community investment and the creation of new jobs. Under this program, a bank or SBA-licensed non-bank lender will make a loan without a government guarantee to a small business for 50% of the small business' total financing requirement. Next, SBA guarantees 40% of the financing requirement and takes a subordinate position to the bank. The remaining 10% is usually put up by the borrower.

In 1995, SBA testified before the Committee that the 504 program had a very low risk to the government, and the government's exposure was very low as a result. In response to SBA's assurances about the fiscal soundness of the 504 program, the Committee on Small Business approved an incremental increase in the borrower fees in order to reduce the credit subsidy rate from 0.57% to 0. The fee increases were included as part of the Small Business Lending Enhancement Act of 1995, S. 895, which was signed into law on October 13, 1995, as Public Law 104–16.

In March 1996, the President's FY 1997 budget request for SBA described a much different review for the 504 Program. Previous assurances about fiscal soundness of the program were withdrawn, and SBA revealed that program losses were actually 1,200% higher than previously submitted. In fact, SBA had been understating the default rate and overstating the recovery rate, which created a dramatic understatement of the risk of the program and losses actually being borne by the federal government.

Without delay, the Committee undertook an investigation into the circumstances surrounding the failure of SBA to provide accurate and truthful information to the Congress. As a result, future submissions by SBA and the Office of Management and Budget to the Congress will more accurately reflect actual program performance. After studying SBA's budget submission, the Committee worked closely with the lending community and the Certified Development Companies to adjust fees paid by the lenders and borrowers to pay for the increased cost to support this program. The Committee unanimously approved the Chairman's 504 Program reform proposal, which included new fees and underwriting changes to reduce the risk of loss under the program. The Committee concurred with Chairman Bond's recommendation that the government should not fund additional future losses under this program.

The Congress adopted the 504 program reform measures as part of the Small Business Programs Improvement Act of 1996, H.R. 3719, which was included in the FY 1997 Omnibus Consolidated Appropriations Act. Without this legislation, an appropriation of $181 would have been necessary to support the 504 program, and this important program for small business would have been terminated. This bill was signed into law on September 30, 1996, as Public Law 104–208.

C. Small Business Investment Company Program

Background

Historically, small businesses that have sought venture capital investments from the traditional Wall Street investment firms have walked away empty handed. While small businesses have been responsible for the net increase in new jobs and almost all new business start-ups, the well known, large investment firms have been reluctant to concentrate any effort to make these small-type investments, which generally fall in the $500,000 to $2.5 million range. Furthermore, banks have been reluctant to loan money to these higher risk small businesses.

SBA's Small Business Investment Company (SBIC) program supports and encourages this type of small business investments. The SBIC program loans government-guaranteed risk capital to venture capital firms licenses by SBA as Small Business Investment Companies, which they match with private capital and invest in small businesses. In FY 1995, SBICs invested $1.09 billion in small businesses; in FY 1996, SBIC investments increased to $1.17 billion.

An adjunct of the SBIC program is the Specialized Small Business Investment Company (SSBIC) Program. Firms licensed by SBA in this program agree to make investments in small businesses that are owned and controlled by socially and economically disadvantaged individuals. In FY 1995, $153.5 million was invested by SSBICs in disadvantaged small businesses. In FY 1996, $101.5 million was invested by SSBICs.

Legislation

The Small Business Investment Company Improvement Act

In 1995 and 1996, the Committee held a series of hearings highlighting the SBIC program, which culminated in Chairman Bond's introduction of the Small Business Investment Company Improvement Act of 1996, S. 1784. This important legislation was approved unanimously by the Committee and the full Senate.

The Chairman's bill made significant improvements in the management of the SBIC program designed to enhance its safety and soundness and reduce the risk of loss to the federal government. Minimum private capital requirements for new license applicants were increased to $5 million for debenture-type licensees and $10 million for participating-security licensees. Under this bill, SBA will have the discretion to reduce this requirement to as low as $5 million for a participating-security licensee after determining that its management team and investment plan meet all other SBA requirements.

Under S. 1784, SBA must ensure that each SBIC has a diversification between management and ownership of SBIC. In addition. S. 1784 requires that SBA intensify its oversight of all SBICs to determine that no SBIC receives SBA-guaranteed leverage when it is under capital impairment, and that SBICs do not incur excessive third-party debt. SBA mandates that each SBIC adopt the valuation criteria required by SBA to establish the values of loans and investments of each SBIC subject to an annual review by an independent certified accountant.

As a result of S. 1784, for FY 1997 the cost of the program to taxpayers was reduced from $41 million to $21 million; at the same time, the amount of government-guaranteed risk capital available to small businesses grew from $364 million to $700 million.

S. 1784 also provided for consolidation of the SBIC and SSBIC programs. With the decline in the level of new SBIC investment funds flowing to disadvantaged companies, the Committee believed that by combining the resources of both programs, thus making more investment capital available to SSBICs, additional investments could be made in disadvantaged small businesses. S. 1784 further specified that each SBIC invest at least 20% of its dollar investments in "smaller enterprises," which are smaller firms with a net income of $2 million or less and a net worth of $6 million or less.

S. 1784, in its entirety, was included in the FY 1997 Omnibus Consolidated Appropriations Act, which was signed into law by the President on September 30, 1996, as Public Law 104–208.

D. Expanded Export Opportunities for Small Businesses

Background

Conducting businesses outside the United States places a significant, and sometimes overwhelming, burden on small businesses. At the same time the nation has been a leader in the expansion of the world economic community, America's small businesses do not have the resources, nor oftentimes the knowledge, to enter successfully into foreign markets.

One of the primary missions of the SBA in the export arena is to make credit available to small businesses that wish to conduct business overseas. In FY 1995, SBA's Export Revolving Line of Credit Program provided financing for approximately 210 small businesses. As the result of this small number of export loans, Chairman Bond urged the SBA and the multi-agency Trade Promotion Coordinating Committee to streamline SBA's export loan program and take additional steps to make export loans more readily available to small business. The number of SBA export loans increased by over 50% in FY 1996.

E. Revitalizing America's Rural and Urban Communities

Background

Historically, America's cities and poor rural counties have experienced much difficulty attracting investments and creating new jobs in economically distressed areas. Following a series of hearings conducted by the Committee on Small Businesses in 1995 on the 8(a) Minority Contracting Program and Entrepreneurship in America, the Chairman concluded that federal contracting programs that were designed to assist minority-owned small businesses were failing to stimulate investment and the creation of new jobs in the areas where this help is needed most, in poor rural areas and many inner cities.

Legislation

HUBZone Act of 1996

In February 1996, Chairman Bond introduced the Historically Underutilized Business Zone Act of 1996, S. 1574, which creates incentives for small businesses to locate in economically distressed rural and urban areas. A "HUBZone" is a rural county or one or more census tracts in an urban area where the median household income is substantially below the state average.

Small businesses that are located in a HUBZone and that employ at least 35% of their workforces from a HUBZone would be eligible for special preferences to receive federal government contracts. For example, a HUBZone qualified small business could receive a sole-source federal government contract for up to $5 million, or the competition for a government contract could be limited to HUBZone qualified small businesses.

Under Chairman Bond's bill, after a four year phase-in period, 4% of all federal government contracts would be targeted to HUBZone-qualified small businesses. In FY 1996, approximately $8 billion in government contracts would have been included under this bill.

After introduction of S. 1574, the Committee conducted a hearing on the bill in March 1996. The Committee took no action on the bill prior to the end of the 104th Congress.

F. WOMEN BUSINESS OWNERSHIP

Background

Small businesses owned by women are the fastest growing segment of the U.S. economy. By the year 2003, more than 50% of all small businesses will be women-owned. This enormous growth is occurring even though women continue to be confronted with more obstacles than men who own businesses.

Women have greater problems than men in raising capital to start up a small business or to invest in business growth. During the past two years, some trends indicate that barriers surrounding women's access to bank loans appear to be falling. However, women business owners continue to experience a significant disadvantage in obtaining higher risk venture capital investments.

During the 104th Congress, the Committee on Small Business strongly supported SBA's Women Business Ownership Programs. The President's FY 1997 budget request for SBA, however, proposed terminating the Women's Business Demonstration Grant Program, while shifting responsibility for this oversight to the Small Business Development Centers. SBA never submitted a plan to the Committee explaining how this transfer would be conducted and how it would preserve the integrity of this vital women's business ownership program. As part of the Omnibus Consolidated Appropriations Act, the Senate Appropriations Committee adopted a provision requiring that SBA fund the entire Women's Demonstration Grant Program in FY 1997.

G. SMALL BUSINESS RESEARCH AND DEVELOPMENT

Background

The Small Business Technology Transfer (STTR) pilot program was established in 1992 to stimulate technological innovation, use small businesses to meet federal research and development (R&D) needs, foster and encourage socially and economically disadvantaged person's participation in technological innovations, and increase the private sector's commercialization of innovations derived from federal R&D projects. In order to be eligible for an STTR award, a small business must collaborate with a non-profit research institution, such as a university of a federally funded R&D center.

The goal of the program is to provide a more effective mechanism for transferring new knowledge from research institutions to industry. The General Accounting Office (GAO) monitors this program on an on-going basis. GAO has reported to the Committee on Small Business that the quality and commercial potential of the STTR program's winning proposals were rated highly during the first complete year of the program.

Legislation

Under legislation adopted by the Congress in 1994, the STTR pilot program was set to expire on September 30, 1995. The Committee unanimously approved Senator Bond's recommendation that the program be extended for one year, and this extension was included in the Omnibus Consolidated Appropriations Act, which was signed into law on September 30, 1996, as Public Law 104–208.

The one year extension of the STTR pilot program allows the Committee on Small Business an opportunity to evaluate a longer term extension and other program improvements when it considers the three-year reauthorization of SBA programs in early 1997.

IV. HEALTH CARE ISSUES

The 104th Congress made significant progress in bringing equity to the small business health insurance market. The Health Insurance Portability and Accountability Act of 1996, H.R. 3103, the most extensive health-care reform measure in almost a decade, included several recommendations offered by the delegates to the White House Conference on Small Business and aired by small business owners during the Committee's "Entrepreneurship in America" series of hearings.

The Act includes several provisions designed specifically for small businesses. One of these—a pilot program for Medical Savings Accounts—will be available only to self-employed persons and businesses with less than 50 employees. This restricted program allows individuals to deposit tax-free funds into a special account to cover routine and preventative medical care. Employees with monies remaining at the end of the year can either withdraw the funds or roll them over into an IRA. Small businesses will also benefit from language in the bill that promotes small business purchasing coalitions. In addition, the Act increases the deductible amount of health-insurance costs for the self-employed incrementally from the 1996 level of 30% to 80% by the year 2006.

Finally, the legislation improves the availability of health-care insurance without imposing employer mandates. Effective July 1, 1997, insurance companies that sell policies in the small group market, (i.e., to companies with between two and fifty employees) must offer group plans to all employers in that market. The bill would also curb the insurance industry's practice of denying coverage to many individuals because of an pre-existing illness.

VII. BANKING AND FINANCIAL INSTITUTIONS

Regulatory relief for small banks also ranked high on the legislative agendas of the White House Conference delegates and Small Business Committee members. Chairman Bond and Senators Bennett, Burns, Frist, Heflin, Nunn and Warner jointed as co-sponsors of the Economic Growth and Regulatory Paperwork Reduction Act, S. 650. This bill, which was incorporated into the Omnibus Consolidated Appropriations Act, will bring paperwork and regulatory relief to small banks across the nation.

Chairman Bond advocated several provisions directed at smaller financial institutions. The most significant of these reforms will allow well-capitalized, well-managed banks to extend federal examination cycles. Small banks will also benefit from the expanded exemptions from home-mortgage-data reporting requirements. Finally, extensive changes in the Truth-in-Lending Act, the environmental liability laws, and bank application processes are expected to reduce administrative costs for all financial institutions.

VIII. SECURITIES LAWS

The 104th Congress enacted two securities-related laws that benefit small and start-up businesses. The Private Securities Litigation Reform Act of 1995 offers sweeping revisions to the rules governing private securities litigation and class actions based on the federal securities law. These modifications are expected to assist emerging growth in obtaining capital financing.

The second securities bill, the Capital Markets Efficiency Act of 1996, streamlines regulatory compliance for small investment advisors operating in multiple states. Chairman Bond was a strong advocate for the most notable change to the securities laws, which provides a uniform federal de minimis registration exemption from state registration for small investment advisors. Under this provision, if a small advisor maintains fewer than six clients in a single state, the advisor will be exempt from the registration requirements of that particular state. Another provision ensures uniformity of books and record requirements for small advisors, thereby alleviating the problem of complying with varying requirements in multiple states.

IX. TELECOMMUNICATIONS

A. Telecommunications Deregulation Act

Background

The 104th Congress set a goal of overhauling the nation's telecommunications laws for the first time since 1936. The Telecommunications Act of 1996, S. 652, was introduced by Commerce Committee Chairman Pressler, and its focus was to phase out unnecessary and burdensome regulation in one of the country's most dynamic industries. The industry is experiencing a vibrant growth period and offers businesses and entrepreneurs limitless opportunities for growth. The government regulatory structure, however, has failed to keep pace with the industry advancement, which has hindered rather than promoted the potential to the telecommunications industry.

Legislation

S. 652 ends decades of excessive government regulation throughout the telecommunications industry. The legislation opens the local telephone marketplace to competition and opens new opportunities for further competition in the long distance telephone marketplace. The legislation phases out rate regulation in the cable and video industry while opening up the industry to increased participants and competition.

Rapid deregulation also presents the possibility of the large telecommunications conglomerates dominating the industry before small businesses are prepared to compete in the newly deregulated environment. Under intense pressure from small business advocates, the legislation addresses many of the concerns specific to small telecommunications businesses. Most importantly, the bill includes Section 257, The Market Entry Barriers Proceedings, which directs the Federal Communications Commission (FCC) to examine the industry for regulatory and financial barriers to entry for small businesses and suggest plans to eliminate these barriers. The legislation also requires the FCC to hold regular hearings to examine barriers to entry throughout the telecommunications industry that prevent small businesses from entering the industry and prospering.

Small carriers throughout the telecommunications industry obtained language in the legislation critical to their futures. Small and rural cable providers were immediately exempted from rate regulation, while the existing rate structure for cable-pole attachments will be phased out over a period of five years. The legislation also strongly encourages the providers of cable television programs to sell their product to small cable buying groups, enabling small cable companies to compete with the large cable companies that purchase programming at volume discounts. Alarm monitoring companies, an industry that is dominated by small businesses, won language that grants monitoring companies a six year grace period before having to compete with the incumbent local bell telephone companies, which are the current owners of the telephone networks used by the monitoring companies.

Small telephone companies obtained language critical to their ability to compete effectively with the local incumbent operators and the major long distance carriers. The legislation includes language requiring the incumbent Bell companies to offer resale service to small local carriers at wholesale rates. The bill also requires the Bell incumbent telephone companies to resell service at nondiscriminatory rates. Small local carriers were awarded flexibility and limited waiver possibilities for complying with the interconnection requirements with which the larger Bell operating companies were directed to comply under the bill. Both local and long distance carriers are entitled under the bill to purchase resale and other services on an unbundled, nondiscriminatory basis and at nondiscriminatory rates, including such important functions as dialing parity and directory assistance. Without these provisions, small carriers would not have a realistic opportunity to compete.

Committee action

Chairman Bond and the Committee were responsive to the many concerns that small telecommunications providers had with the telecommunications bills and advocated legislation that addressed these small business needs. Upon the signing of the bill by President Clinton, Chairman Bond immediately sent a letter to FCC Chairman Reed Hundt outlining the importance of the Market Entry Barriers Proceeding section to small business and urged the FCC to give small business entry barriers the emphasis that they deserve. Chairman Hundt responded with his concurrence and his assurance that the FCC would conduct immediate and aggressive hearings and begin the process of eliminating these market barriers to entry.

Chairman Bond also urged the House-Senate conference committee to consider important small business telecommunications issues. In a letter to Chairman Pressler, Chairman Bond asked that the fullest consideration be given to the issues critical to small providers advocating interconnection flexibility and nondiscriminatory resale on an unbundled basis for small local carriers and wholesale resale rates for long-distance carriers. The Chairman also made the case for such important issues as the phasing out of the pole-attachment rate structure and a separate subsidiary requirement to ensure that the large companies are unable to cross-subsidize ventures to compete against small carriers. The Chairman also advocated a grace period for the alarm monitoring companies to prepare for competing with the large local exchange carriers. Each of the Chairman's positions were included in the final bill as signed by the President.

B. Small Cable Television Concerns

The availability of cable programming at fair and competitive prices remains a principle concern of small cable television operators. Shortly after passage of the legislation, Time-Warner Inc. and Turner Broadcasting System petitioned the Federal Trade Commission (FTC) for approval of their merger. A successful merger would have placed Turner Broadcasting a significant producer of cable programming services, in control of Time-Warner, part owner of the DBS home satellite system and a large provider of cable television services. This vertical integration may have produced a powerful incentive for Time-Warner Inc. to increase sharply the prices offered to smaller cable operators at discriminatory prices to favor their own enterprises. Cable operators were fearful of the effect that this incentive could have on their ability to compete and continue to offer quality and affordable services to their customers.

Chairman Bond contacted each of the five FTC Commissioners and outlined his concern that the merger could result in such vertical integration and an incentive to discriminate in pricing against the small cable carriers. Chairman Bond met with representatives of the FTC while the merger consent decree was being considered and made a case on behalf of the small carriers that the FTC should strongly consider the possibility of discriminatory pricing incentive should the merger be approved.

The FTC responded to the pricing concerns held by the small cable operators, giving Chairman Bond's concerns, as Commissioner Roscoe Starek said, "significant and full and fair attention." The consent decree addressed the concerns by directing that in areas in which Time-Warner and its substitutes compete with small cable operators, small operators are guaranteed by the consent decree the same nondiscriminatory pricing policies offered by Turner prior to the merger. The Time-Warner company is also prohibited from bundling services and engaging in discriminatory practices that will undermine small competitor cable operator's ability to compete with this telecommunications giant. Small cable operators have a history of providing high quality service, often to areas that other operators hesitate to serve. This language rewards these operators for their service, and gives them opportunity to compete in this new environment.

X. PRODUCT LIABILITY REFORM

Product liability reform legislation was introduced in the 104th Congress with the support of Chairman Bond and several members of the Committee. Small businesses expressed their support to the Committee for uniform product liability laws with limitations on the possible plaintiffs in a civil suit and reasonable limitations on the award of punitive damages. These businesses expressed their frustration with the current state of the civil justice system. They shared with the Committee accounts of defending legal claims when plaintiffs are simply in search of a deep pocket and paying punitive damage awards that bear little relation to the actual damages. Small business owners live in a constant state of anxiety that a random claim and decision could put them out of business or that they could be financially crippled by legal expenses in defending a meritless legal claim.

A bill reforming the product liability system was introduced in the 104th Congress by Senators Gorton and Rockefeller. The legislation included uniform statutes of limitations and repose, limited liability for sellers that are not manufacturers, several liability for non-economic damages, and reasonable limitations for the award of punitive damages. Similar legislation was introduced in the past five Congresses but never came close to becoming law. This bill, with the strong support of small business, passed in both the Senate and House for the first time. The Senate bill contained a small business provision limiting punitive damage awards in a wider circle of civil cases to $250,000 or twice the economic damage award for businesses with fewer than 25 full-time employees.

Chairman Bond sent a letter to the conference members emphasizing the importance of this section for small businesses and the strong support for introducing common sense into the process for awarding punitive damages in suits against small businesses. The conference committee included the section in the final bill. Despite the support of the bill among small businesses, President Clinton, vetoed this bill.

XI. HEARINGS OF THE COMMITTEE

"Exploring the Future of the Small Business Administration"—Washington, D.C., February 10, 1995

On February 10, 1995, the Committee held a hearing to review the current programs of the Small Business Administration (SBA) and their future viability in a budget conscious environment. Chairman Bond summarized the purpose of this hearing by stating that the voters have indicated they want change, and "I view that call for change as a positive challenge * * * to all of us in government to target our resources wisely, increase our oversight over Federal activities, and ask the basic questions of what we are doing, why are we doing it, how are we doing it, and do we need to be doing it?"

Philip Lader, Administrator, U.S. Small Business Administration was the sole witness. Mr. Lader began his testimony by stating, "My vision of the SBA is very much a public-private partnership." He went on to defend the SBA against reports that only one percent of small businesses in America are helped by the organization, stating that in 1994 "more than one million businesses directly had training and education assistance from our various SBA programs."

Mr. Lader broke down what the SBA offers into four categories: Money, education and training, advocacy, and the disaster assistance program. He intended these categories to show the vast number of people the SBA actually does affect. The first, money, is the one most people think of when they think of the SBA. In 1994, the SBA financed $950 million in loans for small businesses. With this money many businesses were started and many were able to expand, and as a result, new jobs were created.

Education and training are services offered by the SBA that people often do not think about, although they affect more than one million businesses. These programs help businesses acquire the knowledge to stay in business and to grow. In addition, advocacy is a growing part of the SBA today enabling the agency to undertake research and help reduce the paperwork burdens on small business by working within the government to see that agencies adhere to the paperwork reduction requirements. Mr. Lader estimated that this function of the agency benefits 20 million small businesses.

Finally, the SBA is helping small businesses and all citizens through its disaster relief program. With a portfolio of $5 billion and 250,000 people, this service provides emergency relief not only to small business, but home owners as well. Although Mr. Lader stated his belief that this program is very important, he suggested that the disaster loan interest rate of four percent should be increased to equal the cost of money to the government plus two percent. He gave as the reason for this proposed change the high subsidy rate for disaster loans—for every $100 that is provided, it costs the taxpayer $32.

Mr. Lader testified that the SBA's programs are very important to the United States economy as well as individual businesses. With a few cost cutting measures and changes in some policies, the SBA will be able to continue to help start-up and growing small businesses for many more years.

"SMALL BUSINESS OWNERS PERSPECTIVE ON THE SMALL BUSINESS ADMINISTRATION"—WASHINGTON, D.C., FEBRUARY 16, 1995

On February 16, 1995, the Committee held a hearing to review the Small Business Administration (SBA) and its impact on small businesses. Chairman Bond, noted that "54% of America's force is employed by small business, which generates 50% of the gross domestic product." The SBA has been instrumental in the continued growth of small businesses, but the Chairman believes it is important to review the SBA and eliminate the programs that are not working. In addition, it is critical to look for new, innovative ways for the SBA to keep up with emerging and growing businesses.

The Committee first heard from two witnesses about their experiences with the SBA's 7(a) loan program. Bob Giaimo, President and Chief Executive Officer, Silver Diner Development, Inc., testified about his experiences with the SBA and how SBA-guaranteed loans have been a key element in helping him build three successful small businesses: Blimpies, American Cafe and Silver Diner. As a college freshman, Mr. Giaimo opened his first franchise and the SBA provided him with the credibility and stability to start his own business at such a young age. Later, he turned to the SBA for help in starting two other businesses. Giovanni Coratolo, Owner, Port of Italy, Inc. also testified about his experience with the 7(a) loan program and the benefits it had on his restaurant business. Mr. Coratolo urged the Committee to continue funding for the 7(a) loan program.

Robert C. Varney, Ph.D., Chairman, Greater Washington Chapter, Council of Growing Companies, President, Robsan Corp., and Past Chairman and Chief Executive Officer, International Telesystems Corp., testified that private investment incentives are critical for small business growth and development because they will provide more capital for entrepreneurs to start and expand their businesses. Lewis A. Shattuck, Executive Vice President, Barre Granite Association, and member of the Board of Trustees, National Small Business United, pointed out that over 50% of the nation's employees are employed through small business, which he believes is directly related to the SBA and its programs. And as Virginia Littlejohn, Past President, National Association of Women Business Owners, President, The Star Group and Global Strategies, testified, women have become a growing force in the world of small businesses. "They own one-third of all the small businesses in the country." The growth of these women-owned businesses can be attributed to the SBA's pre-qualification pilot in which women receive help with the loan process.

The Committee also heard testimony about the need for improvement within the SBA and its small business programs. James B. Graham, Founder, Faxland Corp., stated that the SBA can be effective in assisting small businesses but needs to make improvements to its services. Due to the paperwork and higher cost than other avenues available to him, he did not continue to utilize the SBA loan program. He also stated that the 8(a) program focuses on helping only minority employers and not the minority employees. Gary Petty, President and Chief Executive Officer, National Moving and Storage Association, and Chairman of the Board, Small Business Legislative Council, testified about his concern with the effects of government-imposed burdens on small business, and requested that the Committee take a cautionary note of lenders passing requirements onto high-risk entrepreneurs because their chances for success are already slim.

"ENTREPRENEURSHIP IN AMERICA: EXCESSIVE GOVERNMENTAL BURDENS ON SMALL BUSINESS"—ALBUQUERQUE, NEW MEXICO, FEBRUARY 20, 1995

This was the first in a series of field hearings held during the 104th Congress designed to listen to the concerns of small business entrepreneurs from around the country. The philosophy behind the "Entrepreneurship in America" series was to provide smaller entrepreneurs—those who do not normally testify at hearings in Washington, D.C.—the opportunity to express their concerns and have an impact on Washington lawmakers in the environment where they run their businesses.

This hearing, held by Chairman Bond and Senator Domenici, took place in Albuquerque, New Mexico. Citing the importance of small businesses to the economy of New Mexico, Senator Domenici emphasized that 97% of New Mexico's firms were small businesses and that 57% of those firms employed five people or less. Senator Domenici also emphasized the negative economic impact that excessive governmental regulations have had on small businesses in New Mexico, noting that the governmental burden per worker for a small business has increased more than a third since 1989, corresponding to a drop in average profits for New Mexico's small businesses.

During the hearing, several New Mexico small business owners testified that they bear a disproportionate burden in complying with comprehensive federal regulations that are often designed for large businesses—those that have enough financial resources and a large enough labor base to amortize these costs. According to the witnesses, many small businesses simply do not have the resources to comply with federal regulations that have grown both in number and complexity. Chet Lytle, President of Communications Diversified Inc., pointed out that many regulations are so complex and ambiguous that it is difficult to determine what a business must do to comply. He added that "the cost of determining compliance requirements diverts funds from job creation and capital investment." Greg Anesi, Regional Coordinator of the Small Business Advocacy Council in northwest New Mexico, agreed and noted that the topic most often discussed at council meetings was the inability to comply with federal regulations. Regulations have become so complex, and in some cases contradictory, that it is often necessary to take the costly step of hiring consultants to help make sure a business is in compliance. The witnesses said that the burden of coming into compliance with such regulations can often result in lost time, lower profits, less expansion, and fewer new jobs.

One of the greatest concerns of the witnesses is the adversarial attitude of federal regulators. Marlo Martinez of Espanola, New Mexico, mentioned that regulatory agencies seemed to discourage businesses rather than offer them assistance. "There is no spirit of cooperation between regulators and small businesses," she said. Don Davis of Clovis-Portales, New Mexico suggested that "regulatory agencies should become more teacher and coach and less traffic cop and prosecutor." Mary Garza of Las Cruces, New Mexico, pointed out the need to do away with the "us against them" mentality between regulators and small businesses and bring about cooperation and understanding. All of the witnesses favored better communication and quarterly updates on new or revised regulations. Ms. Garza also suggested that it would be helpful if rule changes were not implemented until training and education could be accomplished.

There was a consensus among witnesses that a lack of accountability exists on the part of federal regulators, which has brought about a situation in which small businesses are paying not only for their own mistakes, but for those of the regulators as well. Mr. Anesi mentioned that "there is no practical resourse for a bad regulation or a bad regulator." He said that regulators make mistakes in interpreting and writing regulations and the only recourse for these mistakes is litigation, which is usually very costly and time consuming. Small businesses simply do not have the resources to challenge regulators. Mr. Davis conveyed the feelings of many of the panelists when he suggested that some form of constant oversight is necessary "to ensure that the original intent of the law is being addressed and that the benefit of implementation and enforcement is commensurate with the costs of the requirements." This concern was addressed by a provision in the Small Business Regulatory Enforce Fairness Act (SBREFA), authored by Senator Bond and enacted into law in 1996. The provision calls for the establishment of an Ombudsman at the U.S. Small Business Administration (SBA) who will address complaints and grievances from small business owners.

A major item of discussion at this hearing focused on the lack of any significant role by small businesses at the front end of the federal rule-making process and, by extension, the resulting lack of a level playing field for small entrepreneurs in complying with those rules. As a direct result of this hearing, Chairman Bond's SBREFA law was amended to address this concern by including a section authored by Senator Domenici, establishing small business advocacy review panels composed of small business owners who must be consulted before agencies such as the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) make new regulations that affect small businesses.

"S. 350, Regulatory Flexibility Amendments Act of 1995"—Washington, D.C., March 8, 1995

On March 8, 1996, the Committee held a legislative hearing on the Regulatory Flexibility Amendments Act of 1995, S. 350, introduced by Chairman Bond. The Regulatory Flexibility Act, enacted in 1980, was designed to reduce the impact of federal regulations on small business. Under the Regulatory Flexibility Act, unless a federal agency can certify that a proposed regulation will not have a significant impact on a substantial number of small entities, it must prepare a regulatory flexibility analysis describing the impact and outlining any alternatives to the regulation considered during the rulemaking process.

However, the Regulatory Flexibility Act explicitly prohibited any judicial review of its requirements. Enforcement of the Act was left to the discretion of the Executive Branch. As Chairman Bond noted in his opening statement, some Federal agencies have chosen to ignore their obligations under the Act. S. 350 would amend the Regulatory Flexibility Act to allow for judicial review of whether an agency's certification that a regulation would not have a significant impact on a substantial number of small entities was proper, and whether an agency's final regulatory flexibility analysis was in compliance with the requirements of the Act. At the hearing, the Committee sought testimony from a number of witnesses on the provisions of S. 350.

Jere W. Glover, Chief Counsel, Office of Advocacy, U.S. Small Business Administration, testified that the one problem most clearly and constantly mentioned by small business is the regulatory burden imposed by the state and federal governments. In addition, he testified that one solution universally mentioned by small business is to improve and strengthen the Regulatory Flexibility Act and to provide judicial review. Mr. Glover conveyed the Administration's support for judicial review of the Act, noting that both the President and the Vice President's National Performance Review have supported this amendment. Mr. Glover testified that "the only real opponents to judicial review for Regulatory Flexibility Act are the general counsels and the regulators. They, of course, do not like having anyone interfere with their process, and it is always a challenge when we try to resolve those internal disputes." Finally, Mr. Glover described the memorandum of understanding between his office and the Office of Management and Budget to work together on compliance with the Regulatory Flexibility Act.

Johnny C. Finch, Assistant Comptroller General, Government Division, General Accounting Office (GAO), testified on the findings of a April 1994 GAO report, which indicated that agencies' compliance with the Regulatory Flexibility Act has varied widely from one agency to another. He also testified on the findings of a 1992 GAO survey of agency compliance with the requirements for periodic review of regulations under section 610 of the Act. This survey found that three-quarters of the agencies surveyed believed that they were not required to publish a plan "because none of their regulations had a significant economic impact on a substantial number of small entities." Mr. Finch noted several reasons for agencies' apparent lack of compliance with the Act. First, no one is authorized to interpret key statutory provisions for the various agencies, nor has any guidance been issued defining these key statutory provisions. Second, there is no standard criteria for agencies to follow in reviewing their rules. Third, no one can compel rulemaking agencies to comply with the provisions of the Act. Mr. Finch also noted that OMB's authority to review rules to ensure compliance with the Act is limited because under current executive orders, OMB cannot review rules proposed by independent regulatory agencies. Finally, he testified that congressional action is needed to clarify statutory authority in these areas.

The Committee also heard testimony from David Voight, Director of the Small Business Center, U.S. Chamber of Commerce, Michael O. Roush, Director of Senate Federal Government Affairs, National Federation of Independent Business, and John S. Satagaj, President, Small Business Legislative Council. These witnesses testified in favor of granting judicial review of the Regulatory Flexibility Act, and in favor of S. 350. Mr. Voight testified that the IRS has taken the position that its rules are "interpretive rules" exempt from the Act, and that the applicability of the Act should be expanded to cover IRS interpretative rules. Mr. Roush testified on a number of ways to strengthen S. 350, including, broadening the standing for judicial review, extending the time to file a challenge, and directing courts to stay successfully challenged regulations.

"ENTREPRENEURSHIP IN AMERICA: FINAL OSHA LOGGING REGULATIONS"—KALISPELL, MONTANA, MARCH 11, 1995

This was the second in the Committee's series of "Entrepreneurship in America" field hearings, which were designed to assist Congress as it rethinks how best to serve small business by obtaining the views and comments of that constituency. They were also intended to enable small businesses to participate in the legislative process through a forum that is more easily accessible than hearings held in Washington, D.C.

Chaired by Senator Conrad Burns, the hearing took place at the Outlaw Inn Convention Center in Kalispell, Montana. The hearing examined the effects on small business of the Occupational Safety and Health Administration's (OSHA) final rule on logging, which became effective on February 9, 1995. At a time when Congress was considering a moratorium on federal rules and regulations, the Committee was particularly interested in obtaining testimony from affected parties on the logging rule's effect on productivity, worker safety, and whether the cost of compliance would affect the profitability of the timber industry. As noted by Senator Burns, the timber industry "is the backbone of our economy and I do not want to see it bogged down in red tape and unnecessary regulations."

Greg Baxter, Deputy Regional Administration, Region 8, and Richard Sauger, Senior Safety Specialist, testified on behalf of OSHA that a number of specific logging issues were raised in the rulemaking process and that OSHA sought extensive public comment to provide insight from affected parties. Messrs. Baxter and Sauger testified that public comment was received and integrated into the rule on such issues as power-saw brake requirements to prevent kickbacks, and protective footwear and face protection. They also noted that state consultation programs are available in all 50 states, which provide free safety and health services to small business employers.

The logging industry representatives provided the Committee with specific comments on the logging rule and the burden that this regulation would place on their businesses and on individual workers. John Hansen, Field Safety Representative, Montana Logging Association, testified that OSHA's new rules do little to improve on-the-ground safety for loggers in Montana. He cited the "silly, doctor approved safety kits * * * and the imaginative chain saw resistant safety boots as examples of OSHA's lack of understanding of industry issues." Additionally, Mr. Hansen stated that his greatest frustration was OSHA's "categorical dismissal" of many constructive suggestions offered by logging and safety officials.

Following Mr. Hansen, a variety of industry officials, small timber owners and workers reiterated their belief that the OSHA logging final rule would do little to reduce safety concerns, and in some cases, it would even increase safety risks inherent in logging operations. Additionally, timber industry small business owners testified that the compliance costs associated with the new OSHA rule would be burdensome. One owner pointed out that he had to pay for his crew to receive instruction in blood-borne pathogens even though he was informed by health officials that the risk of such pathogens in logging operations was "infinitesimally small."

The consensus of the timber management officials and logging worker representatives was that the logging industry has been extremely safety conscious and has done a good job of self policing. The panelists were also critical of the onerous OSHA enforcement practices. Industry representatives believe that a less confrontational approach, such as providing consultation services or warning notices for first time offenders, would promote better cooperation between government and industry to provide a safe and healthy working environment for the logging industry.

Many of the comments and suggestions raised at this hearing were incorporated into the SBREFA legislation, which was signed into law on March 29, 1996. Among its many provisions designed to assist small businesses, SBREFA will enable small businesses to provide their input in the rule-making process and make federal agencies such as OSHA more accountable for their enforcement practices. Senator Bond also co-sponsored the Occupational Safety and Health Reform and Reinvention Act, S. 1423, which is designed to focus OSHA away from its "gotcha" enforcement approach to that treats small business owners like partners in the regulatory process.

"THE SMALL BUSINESS ADMINISTRATION'S 8(a) MINORITY BUSINESS DEVELOPMENT PROGRAM—WASHINGTON, D.C., APRIL 4, 1995

On April 4, 1995, the Committee held a hearing to address questions concerning the 8(a) set-aside program. In particular, the hearing focused on the original intent of the program, whether the program is fulfilling its purpose, the presumption that members of certain racial and ethnic groups are socially disadvantaged, and ways to expand opportunities without providing preferences for certain groups of people.

Chairman Bond opened the hearings with a brief history of the 8(a) program. Section 8(a) of the Small Business Act dates back to 1953, which until 1967 authorized the SBA to "let Federal procurement contracts to small business." In 1967, in response to the Kerner Commission report, President Johnson substantially revised the program, and Section 8(a) was "administratively rewritten to direct Federal procurement contracts to minority-owned small businesses. It was in 1978, with the adoption of Public Law 95–507, that the 8(a) Minority Business Program was transformed from an administrative program to a statutory program. Since that time, the 8(a) program has grown significantly. According to Philip Lader, SBA Administrator, the original purpose was a "response to a historic pattern of exclusion, or under representation in business generally, and certainly * * * in Federal procurement." However, he added, "Of the 5400 currently certified firms, only about half of them have actually been getting contracts. Our job is not to guarantee work * * * but is to allow them to have this extra threshold."

Other witnesses, such as Judy A. England-Joseph, Director, Housing and Community Development Issues, Resources, Community, and Economic Development Division, U.S. General Accounting Office, pointed out the weaknesses in the program, which she stated "are preventing some firms from obtaining experience essential to their development." She noted that "while SBA has approved business plans for most firms, it has not given that same attention to annually reviewing these plans to ensure that they accurately reflect the firms' development goals and contract needs." She also added that many firms are still dependent on the 8(a) program after their 9 year participation limit is reached, causing hardship for the firms in the competitive marketplace. Peter Homer, Jr., Co-founder and Member, National Indian Business Association, agreed and suggested dropping "unnecessary regulatory limitations on self-marketing by 8(a) firms * * *. 8(a) firms * * * should be permitted to compete on a national level at all times."

Mr. Lader provided the Committee with some statistics supporting the success of the 8(a) program. The average net worth of participants entering the program is $54,000. He said that "Black Enterprise Magazine, in identifying the 100 top African-American owned businesses, found that 32 of them were or are participants in the 8(a) program." Mr. Lader claimed that "9(a) today is not a Government handout * * * but it means by which qualified businesses have produced goods and services that have met or exceeded the market standards and agency needs." However, Joshua L. Smith, Former Chairman, U.S. Commission on Minority Business Development, disagreed with Mr. Lader's measure of success, noting that "minority business programs in general, have to do with socioeconomic programs. But in reality, socioeconomic programs are neither social nor economic. Therefore, the measures of success are totally lacking."

"I feel very strongly that one succeeds through hard work and commitment," said Santos Garza, Chairman of the Board and CEO, Counter Technology Inc., who admittedly benefited from affirmative action and minority economic development programs. Cassandra Pulley, Deputy Administrator, SBA, said that there had been an effort to include minority firms in other programs, but primarily they are participating in 8(a). "Without 8(a) surely that commitment [of helping minority firms] would continue, but it would be a significant drop and a significant loss to the minority business community without the access to Government contracting and the procurement opportunities." Nancy E. Archuleta, Chairman and CEO, MEVATEC Corporation, and Chairman, Latin American Management Association, said, "the Council does not believe that past and current discrimination have been overlooked and that some form or preference is still needed. Therefore, we proposed * * * streamlining the 8(a) program and creating additional opportunities for small and minority owned business."

Other witnesses testified that special considerations for businesses based on the ethnicity of the business owners does more harm than good. According to James B. Graham, Founder, Faxland Corp., "the 8(a) program penalizes groups it is designed to help. Employees who would have qualified for special contract set asides had they owned the businesses lost commissions, pay, and benefits because they worked for my company." Arnold J. O'Donnell, Member, Associated General Contractors of America, and Vice President, O'Donnell Construction Company, added his belief that "it is fundamentally unreasonable to put race as a prime criteria as to whom can do business with a government organization, and * * * it just gets worse following that premise. [It] takes away low bid and quality of work."

When asked whether opportunities can be expanded without providing preferences, Ms. Archuletta said the "answer it there should be more of a total Federal procurement dollar to all small businesses, therefore eliminating the need for us to fight between 24 percent to a mere 2.7 percent of the dollars that 8(a) companies get." R. Noel Longuemare, Principal Deputy Under Secretary of Defense for Acquisitions and Technology, U.S. Department of Defense, testified that the Defense Department's experience has been that "if the socially disadvantaged standard is deleted or significantly broadened, the program will be so substantially changed as to eliminate the very reason for 8(a)." According to James Graham, "the premise that small businesses need Federal help to compete in the free market is false. It stems apparently from the belief that big business has some insurmountable advantage based on economic resources, when in fact the opposite is true. Our small business thrived on competing with the giants because the burden of bureaucracy inflated their cost of doing business."

"ENTREPRENEURSHIP IN AMERICA: REDUCING GOVERNMENTAL BURDENS ON SMALL BUSINESS"—KANSAS CITY, MISSOURI, APRIL 12, 1995

This was the third in a series of "Entrepreneurship in America" field hearings held during the 104th Congress. The purpose of the field hearings was to obtain the views and comments of small business owners in order to guide Congress as it rethinks how government can best serve small businesses. The hearings allowed small business owners to express their concerns about the state of small business in a forum more easily accessible to them than Washington, D.C.

The hearing, chaired by Senator Bond, took place in Kansas City, Missouri, at the University of Missouri at Kansas City. Chairman bond emphasized that "the burden of government regulation falls most heavily on small businesses, so the Small Business Committee's work will focus on reducing these burdens."

Many of the panelists shared Chairman Bond's concerns about the burdens of over-regulation. Shirley J. Potts, President of DLT Transportation Services, pointed out that "each additional regulation imposes burdensome compliance issues, reporting costs and fear to small businesses * * * there is a fear that one mistake can mean substantial costs, maybe even the cost of our business and all the jobs that go with it." According to Ms. Potts, excessive and overly complex regulations produce significant expenses and delays, and inhibit growth. Many small businesses do not have the resources to handle these obstacles that are often designed to regulate larger businesses. Ms. Potts suggested federal agencies could provide education, counseling assistance, and no fault audits to ease the burdens on small businesses, and help them comply with regulations.

The exorbitant amount of federal regulations was the major topic of discussion at the hearing. All of the panelists participating in the discussions were overwhelmed with the amount of paper work required to keep a business in compliance. Leon Hubbard of Blue Springs, Missouri, noted that the substantial amount of paper work, which is often unnecessary, requires him to either hire extra help or spend more personal time filling out paper work.

Robert Wheeler of Kansas City pointed out that big businesses can devote highly trained and specialized staff cost effectively to dealing with federal agencies and regulations. Many small businesses simply do not have the resources to absorb the costs of hiring this type of help, which impedes the smaller firm's ability to compete with the larger companies. Mr. Wheeler also pointed out that there is an unequal balance of power between federal regulators and small business owners. If a small business owner has a grievance with a federal regulator or a ruling by a federal regulator, his only redress is through the judicial system—never an inexpensive endeavor.

Many of the concerns raised at this hearing were incorporated into Chairman Bond's SBREFA legislation, which became law on March 29, 1996. Among its many provisions, the new law allows for judicial enforcement of the 1980 Regulatory Flexibility Act, requiring federal agencies to consider ways to reduce any significant economic impact of new regulations on small businesses and local governments. SBREFA also requires federal agencies to provide plainly written guides for regulatory compliance. These "Plain English" guides for compliance are designed to reduce the need for hiring experts to ensure that a small business is in regulatory compliance. In addition, the new law establishes an Ombudsman at the Small Business Administration who will counsel small businesses on compliance issues and receive confidential complaints and comments from small businesses about their dealings with federal regulators. Regional citizen review boards will "rate the regulators" based on these comments and publish a report card for each agency.

"ENTREPRENEURSHIP IN AMERICA: FOCUS ON CAPITAL FORMATION"—ST. LOUIS, MISSOURI, APRIL 12, 1995

This was the forth in a series of field hearings held during the 104th Congress designed to give entrepreneurs, who are unable to testify in Washington, the chance to be heard. The hearing on small businesses access to capital was chaired by Senator Bond in St. Louis, Missouri.

As Chairman Bond stated, "[small businesses] employ 54 percent of the American work force. They generate some 50 percent of the gross domestic product. Over the past decade, for every person laid off by large corporations in this country, five new jobs will be created by small business. These new and growing small businesses need ready sources of capital to grow, to hire new employees, to continue to fuel our economic growth." The SBA has several loan programs that it employs to assist small businesses in their search for ready capital, including the 7(a) program, 8(a) program, and the Small Business Investment Company (SBIC) program.

Each of the witnesses testified about a particular SBA program designed to assist entrepreneurs with obtaining capital and operating a successful business. James F. O'Donnell, Chairman, Capital for Business, Inc., testified specifically about the SBIC program, and its impact on small business. Mr. O'Donnell pointed out that the demand for SBIC loans outpaces the ability to provide such loans under the current budget appropriation for the program. He expressed his optimism that eventually there can and should be less government funding and a privitization of the program while still providing investment capital through this important program.

William M. Zielonko, Senior Vice President of Retail Banking, Boatmen's National Bank of St. Louis, testified that his bank deals with every type of SBA loan and believes that they are very beneficial to the small business entrepreneur. He cautioned, however, that the paperwork process needs to be streamlined. Mr. Zielonko stressed that, “We know how to deliver loans, and we find that excessive paperwork strangles this efficiency. Banks are forced to spend unnecessary resources on SBA paperwork, and small business owners wait an unnecessarily long time because of the requirements.”

Dennis G. Coleman, Executive Director, Economic Council of St. Louis County, a not-for-profit economic development agency, urged the Committee to continue SBA’s 504 Program, and he emphasized the benefits it has brought to the St. Louis community with little outlay from the federal government. He also testified that Small Business Development Centers (SBDCs) are integral to the expansion of entrepreneurship, but that they should institute a service charge or fee schedule under which participating companies match the dollars put up by the centers. Tess Greenspan, President, Sappington Farmer’s Market, testified that without the Small Business Development Center in St. Louis, she would not be a successful small businessperson today. She pointed to an impact study that stated, “for every federal dollar invested in the program over $7 in increased tax revenues are generated,” which is not to mention the jobs that are produced from a start-up business. Entrepreneurs turn to the SBDCs as a valuable source of information, especially with regard to the requirements imposed by the federal government, and many businesses rely on the SBDCs to advise them on business strategy.

Virginia Kirkpatrick, Owner, CVK Personnel Management and Training Specialists, testified about how the SBA and its LowDoc programs have helped the people in her community by making it possible for smaller banks to offer loans. As she stated, “Small businesses were creating jobs when large companies were laying them off. I believe seriously that without programs like the 504, 7(a), the LowDoc program, the women’s business loans, that many banks would not make those loans.” Robert Cimasi, President and Founder, Health Capital Consultants gives credit to SBA programs for continued job creation in service industries. He testified that “As hospital consolidations and mergers force lay-offs and significant reductions in the number of service jobs, the importance of new start-up businesses and the expansion of established health care service sector businesses become all the more important to pick up the slack in employment. The capital formation needs of these small service businesses are not likely to be met through private sector commercial lending sources or other sources related to the venture capital and equity markets. It is in this area and for these reasons that the loan guarantee programs of the Small Business Administration are most vitally needed and must continue.”

The opinion shared by Professor Murray Weidenbaum, Director, Center for the Study of American Business at Washington University, and Robert Brochaus, Ph.D., Coleman Foundation Chairholder in Entrepreneurship, and Director of Jefferson Smurfit Center for Entrepreneurial Studies, St. Louis University, is that there are two main problems that small businesses face: high taxation and regulation. If both of these were reduced government-wide, small business would benefit more from SBA's programs. They also stressed that these programs should not have their funding reduced due to their expanding benefits to the economy.

A number of the concerns raised by the witnesses at this hearing about the SBA and its programs were incorporated into the Small Business Lending Enhancement Act, S. 895, which Chairman Bond introduced in the First Session of the 104th Congress. This legislation, which was signed into law on October 13, 1995, made significant improvements to the 7(a) program and substantially decreased the program's subsidy rate. In addition, Chairman Bond and Senator Bumpers offered a substitute amendment in 1996 to the Small Business Programs Improvement Act of 1996, H.R. 3719, which included other suggestions of the panelists. In particular, the legislation restored the 504 loan program to being a self-funding program and overhauled the SBIC program to expand the availability of this investment program while limiting the risk to loss to the federal government. This legislation was signed into law on September 30, 1996.

"Entrepreneurship in America: Federal Government Burdens on Agribusiness"—Cape Girardeau, Missouri, April 13, 1995

This was the fifth in a series of "Entrepreneurship in America" field hearings held during the 104th Congress. The purpose of the hearings was to obtain the views and comments of small business owners and to guide Congress as it rethinks how government can best serve small businesses. The hearings allowed small business owners to express their concerns about the state of small business in a forum more easily accessible to them than Washington, D.C. As the late Missouri Congressman Bill Emerson pointed out, "these hearings are an excellent opportunity for people to be in touch with their lawmakers and to share their thoughts and concerns."

The hearing focused on two major items of concern to small businesses: capital-gains tax relief and over regulation by federal agencies. According to Ronald C. Milbach, President and CEO of the Production credit Association and Federal Land Bank Association of Southeast Missouri, "I think it [a capital gains tax cut] would have a very positive effect on agriculture. Currently, a large amount of land is held by retired farmers who would like to sell, but because of the high tax burden they face, they're probably not going to sell it." Mr. Milbach said that a capital-gains tax break would benefit more than just the property owners. "Another factor I think we would see is the economic impact which would be dramatic from the standpoint that the title insurance companies would be selling a lot more title insurance, appraisers would be busy doing more appraisals, real estate agents selling, and certainly as a lender I would be in a position to want to hire new employees, new loan officers. And at the same time, our agribusiness people that do land grading, those that sell irrigation equipment, would be in a position to have new sales opportunities. So I think it would have a dramatic effect on our economic development in rural America," Mr. Milbach said. As a direct result of the concerns raised by Mr. Milbach and others, Chairman Bond co-sponsored the Capital Formation Act of 1995 introduced by Senators Hatch and Senator Bieberman, which would cut the capital gains tax by 50%. The legislation passed in both houses of Congress, but was eventually vetoed by President Clinton.

The concerns over regulations have increased with the escalating intrusion of federal regulations into property owners' land use decisions. Peter C. Myers Sr., former Deputy Secretary of Agriculture for the U.S. Department of Agriculture testified that "EPA regulations involving wetlands, air pollution and water quality, both surface and ground water, are best left to USDA to provide landowners technical assistance and advice, but not regulation by either agency." The general consensus among the panelists was that local commissions are better suited to make such decisions than federal regulators. Mr. Myers also stated, "If allowed to operate on the better acres in our country without excessive federal regulations, U.S. farmers can continue to produce more crops per acre and thus will be able to continue as viable agricultural operations.

During the hearing, Danny Terry, Chairman of the Department of Agriculture at Southeast Missouri State University, testified that "small businesses represent the foundation of agribusiness * * * assuming a level playing field, the efficiency of American agribusiness currently has no rival." Dr. Terry went on to add that "cumbersome and excessive regulations significantly and adversely tilt this playing field." He suggested that a common sense cost/benefit approach would benefit both small businesses and regulatory agencies, making them both more streamlined and efficient. Ed Barnhill of Charleston, Missouri, suggested that one way to help small businesses become more efficient would be to reduce the amount of paper work required by federal agencies. "The days when you could concentrate on buying and selling your products and servicing your customers now seems to be overshadowed by that paperwork," Mr. Barnhill said.

The Paperwork Reduction Act (PRA) of 1995 directly addressed Mr. Barnhill's concerns by requiring federal agencies to reduce the paperwork burden created by regulations over the next few years. Chairman Bond, who strongly supported this legislation, held a hearing on agency compliance with the PRA in 1996, Many of the other concerns raised at this hearing were addressed in Chairman Bond's SBREFA law, which assists small business owners by providing them with input in the rule-making process and making federal agencies such as OSHA and EPA more accountable for their enforcement practices. Chairman Bond also co-sponsored the Occupational Safety and Health Reform and Reinvention Act, S. 1423, a measure designed to focus OSHA away from its "gotcha" enforcement approach to one that treats small business owners like partners in the regulatory process.

"Entrepreneurship in America: Loosening the Government Noose on Small Business"—Memphis, Tennessee, April 13, 1995

This was the sixth in a series of field hearings held during the 104th Congress designed to listen to the concerns of small business entrepreneurs from around the country. The philosophy behind the "Entrepreneurship in America" hearings series was to seek the views and comments of entrepreneurs from across the nation to guide Congress as it rethinks how government can best serve America's small businesses.

Led by Chairman Bond and Senator Frist, this hearing took place in Memphis, Tennessee. Citing the importance of small businesses in the United States, Senator Frist said "the American small business community ranks as the world's third largest economic power, behind only Japan." Senator Frist also emphasized the problem Tennessee entrepreneurs are having with excessive government regulations. He stressed their concern that federal agencies are strangling them with red tape and that they need relief in order to produce more economic growth and new jobs.

Jack Faris, President of National Federation of Independent Business (NFIB), testified that there are three main things that need to be changed: frivolous lawsuits, regulatory relief, and cutting taxes while reducing spending. He later testified that the initials NFIB members do not like are "IRS * * * by far number one. Number two, OSHA. Number three, EPA." According to Mr. Faris, who's organization is the nation's largest small business advocacy organization, government needs to get out of the small business owner's way, so he or she can do business and generate new jobs and new revenue for the government by expanding the tax base.

Arlene Goodman, Chair of the Tennessee Delegation to the White House Conference on Small Business and former owner of Nashville KOA Campground, told the Committee of her experience with government regulations; "As I looked around the mobile home and counted the massive files, the computers, the stacks of paperwork, I realized I was finally really working for the government. I no longer felt self-employed. The large majority of information in that mobile home was paperwork, * * * files, rules, and regulations that my silent partner [the government] required of me."

Ron Pickert, Chairman and Chief Executive Officer of Sofamor Danek Group, Inc., a medical device development and manufacturing company, expressed concern over FDA's regulatory ability. "The FDA controls virtually every aspect of our operation. This includes expansive authority over the manufacturing, labeling, promotion, and marketing aspects," he said. Due to the FDA regulations on exports, in 1993 Sofamore Danek had to merge with a French company in order to remain globally viable.

Another issue of concern was "leveling the playing field" for competition between small businesses and large companies, as well as easing the burdens of starting new businesses. Patrick Carter stated that the problem in starting a business is capital and trying to get a loan. After the business is started, the problems are taxes, Workman's Compensation, and the lack of a level playing field for competition. Added to the everyday costs of running a business, according to David Hagedorn, General Manager, Frank A. Conkling Co., are costs "imposed by the federal and local governments upon businesses in the name of health, safety, environment, Workman's Comp, and other regulations." Ronald L. Coleman, President, Competition Cams, Inc., said that small business owners, who are faced with the vague and complicated regulations, try in good faith to comply with them and end up making mistakes and spending significant amounts of time and money as a result.

Many of the concerns raised at this hearing were incorporated into Chairman Bond's SBREFA law, leveling the regulatory playing field for small business owners by providing them with input in the rule-making process and making federal agencies such as OSHA and EPA more accountable for their enforcement practices. In addition, Chairman Bond introduced and Congress passed his Substitute Amendment to the 1996 Small Business Programs Improvement Act, resulting in the expansion of SBA loan programs for FY 1997. Chairman Bond also cosponsored the Occupational Safety and Health Reform and Reinvention Act, S. 1423, a measure designed to focus OSHA away from its "gotcha" enforcement approach to one that treats small business owners like partners in the regulatory process.

"THE SMALL BUSINESS ADMINISTRATION'S 7(a) BUSINESS LOAN PROGRAM"—MAY 18, 1995

On May 18, 1995, the Committee held a hearing on the need for building a strong foundation under the 7(a) program and to set the stage for designing a sensible and affordable program to meet long-term demand for small business financing.

The 7(a) loan program is the most popular and effective program of the Small Business Administration (SBA). The program assists small businesses and entrepreneurs in obtaining long-term business loans that would otherwise not be available on reasonable terms from banks and other lenders. According to Philip Lader, Administrator, SBA, the 7(a) program is "a splendid example of a public-private partnership that truly is working." He presented statistics indicating that approximately 60,000 loans are made each year, the average loan being $139,000. The program guarantees up to 75% of a $500,000 loan. Anywhere from $26 million to $34 million in loans are made each day. Mr. Lader cited three guiding principles for this program. The first is "growth of small business financing through a zero-subsidy that provides some administrative flexibility and increased preferred lender participation." Second, "there be incentives for small loans in under served areas. * * *" Finally, an "assurance of continued profitability for our partners * * * so that they continue to be active in this program and there is a fair distribution of costs between the lenders and the borrowers."

Two witnesses addressed the problem of loan services in the 7(a) program. Joe Scallorns, President, Farmers and Traders Bank, recommended the "elimination of all [SBA] regional offices and substantial reduction in the [SBA] central office. The field offices who deliver the product could be enhanced by using only part of the savings from * * * the cutbacks." Gary Hoyer, President and Principal, Princeton Capital Finance Company, LLC, suggested that to improve the program, the 7(a) loan originations should increase and thus develop a viable secondary market "resulting in greater efficiencies for small business borrowers, small business lenders, and the Government."

To take some of the pressure off the 7(a) program, the SBA created the Low Documentation (LowDoc) loan program. Mr. Lader testified that LowDoc is a pilot program because none of the loans are three years old and therefore cannot be considered "seasoned."

However, despite LowDoc being a pilot program, the government is guaranteeing the loans at 90%. Lyle Fredrickson, Manager, Government Loan Center, Bank One N.A., expressed concern that many of these loans are going to start-up companies; therefore, the SBA needs to "look at a credit scoring system to be applied to LowDoc as a means of helping SBA underwrite and monitor those loans." Though the loans are not seasoned and most of the capital goes to start-up companies, LowDoc currently appears to be successful. According to Mr. Lader, as a result of "the LowDoc program, with more responsibility to the lenders, less documentation and review by the SBA, we currently have a healthier portfolio of LowDoc Loans than the overall portfolio."

The biggest issue addressed at the hearing and of most concern to the witnesses was the question of a zero subsidy rate and fees for loans. Currently the SBA has a "savings account" funded by the taxpayers to protect against bad loans. Mr. Lader recommended instead of taxpayers funding the losses, there should be a fee for borrowers and lenders, so that as the demand for loans increases, "the amount paid by the borrowers and the lenders to that reserve would increase." Michael Gallagher, Manager of Government Loan Programs, Business Banking Group, Wells Fargo Bank, agreed with the concept of zero subsidy, but warned "it should be done so as to encourage, not displace, private unguaranteed lending programs and the growth of private unguaranteed secondary markets." He also suggested that the SBA could also be "self funding by becoming the monopoly buyer of 7(a) loans and instituting a fee structure for sellers and keepers of loans. * * *"

Other witnesses testified that a zero subsidy rate would be a bad idea for the 7(a) program. John J. Canning, President and Chief Operating Officer, AT&T Small Business Lending Corporation, and Strategic Business Leader, AT&T Capital Corporation, testified that as a result of the "SBA propos[al] [of] several fees and charges * * * the maximum incremental rate over the prime rate for a 7(a) loan would increase from 12.75 percent to 3.25 percent, an 18 percent increase." Mr. Scallorns warned that "if you raise the lender's cost of making a loan and raise the borrower's cost of getting a loan, then it is going to be more difficult for small business to get the capital it needs." He made the further point that once the subsidy is reduced to zero, there will be pressure in subsequent years to "raise fees and further decrease the return to lenders and further increase the fees to borrowers so that less overall capital will be available."

As a result of this hearing, Congress passed the Bond-Bumpers Substitute Amendment to H.R. 3719, which increased funding to the 7(a) program and provided a number of reforms to strengthen the program.

"THE SMALL BUSINESS INVESTMENT COMPANY PROGRAM"—WASHINGTON, D.C., JULY 13, 1995

On July 13, 1995, the Committee held a hearing to examine the Small Business Investment Company (SBIC) program. The main focus of the hearing was how to reform and improve the SBIC program to enable it to assist more small businesses and entrepreneurs.

Small businesses are an essential part of the U.S. economy. They employ more than half of the domestic labor force and produce nearly half of the gross domestic product. Small businesses are responsible for a significant amount of the job growth over the past two decades, while larger corporations have generally been downsizing over that period of time. The SBIC program is important because it provides the necessary capital to promote the development and growth of small businesses.

During the hearing several witnesses testified about the importance of the SBIC program. Small businesses are incessantly faced with difficulty in obtaining long-term capital necessary for development. Commercial banks usually do not provide the necessary financing and private venture capital funds are often extremely selective with their investments. SBICs create another, much needed option for small business entrepreneurs.

Patricia M. Cloherty, Chairman of the SBIC Re-invention Council and President of Patricof & Co. Ventures, Inc., stated that "the SBIC program uniquely provides both permanent equity capital and long-term debt capital to small enterprises when they need them both." SBICs tend to invest in smaller more diverse enterprises when compared with the private venture capital industry. Cassandra Pulley, Deputy Administrator, Small Business Administration (SBA), noted that Specialized Small Business Investment Companies (SSBICs) go even further. "SSBICs, by definition, serve under served markets by investing only in companies owned by persons who are socially or economically disadvantaged."

Many challenges face the SBIC program, especially the need to increase and stabilize the availability of equity capital and long-term debt financing. Many of the panelists suggested that stabilizing government funding either by appropriation, tax incentives, or privatization would be a good way to address this need. Ms. Pulley agreed with the SBIC Re-invention Council's recommendations for SBIC programs, which include: eliminating the need for appropriations by making the program self funding; providing stable, predictable funding that can grow to meet the needs of small businesses for equity and long-term debt; and improving administration of the program to reduce its risk and improve service.

The Committee also heard testimony suggesting a long-term strategy of "a new off-budget government sponsored enterprise (GSE)" to privatize the SBIC program. This plan calls for: a privately-owned GSE with SBIC licensees owning the voting common stock; a GSE controlled by a Board of Directors; and mandatory Board representation by former SSBICs, and smaller entrepreneurial focused SBIC licensees.

The SBIC program has provided a great service to small businesses in its 37 year history. William F. Dunbar, of the National Association of Small Business Investment Companies, said, "today's SBICs are better managed and better capitalized. They operate in a more reasonable regulatory environment and are successfully filling the needs of small business. Most importantly, today's SBICs are committed to invest in and work with America's small growth companies to help them now and well into the future."

"ENTREPRENEURSHIP IN AMERICA: OVERVIEW OF SBA PROGRAMS IN ALASKA"—ANCHORAGE, ALASKA, AUGUST 16, 1995

This was the first of two "Entrepreneurship in America" hearings held in Alaska during the 104th Congress. These hearings were designed to give small business entrepreneurs from around the country, who are not able to testify at hearings in Washington, D.C., the opportunity to express their concerns and have an effect on Washington lawmakers.

The hearing, chaired by Senator Bond, took place in Anchorage, Alaska, at the invitation of Alaska Senator, Ted Stevens. According to Jan Fredericks, State Director of the University of Alaska Small Business Development Center, 99% of the businesses in Alaska are small businesses, with 65% employing one to four people. Many of these businesses are located in remote areas that are many miles from banking facilities and depend on SBA guaranteed loans. Also, many Alaskan small business owners qualify as Alaska Native Claims Settlement Act (ANCSA) corporations under the SBA's 8(a) program. According to Julie Kitka, President, Alaska Federation of Natives, Inc., the people of the remote villages are dependent upon welfare and other forms of public support for survival, and with the combination of a population boom and a lack of resources to draw large corporations, it is important for the SBA to work with the State of Alaska to create "small enterprise development, producing local employment and income."

During the hearing, several Alaskan small business owners testified that the SBA loan application process is not conducive to small businesses. They suggested that the applications be processed locally, rather than in Washington, D.C. or at the regional field office headquartered in Seattle, Washington. This would reduce the amount of processing time and the confusion in processing the application, particularly for those businesses that fall under the 8(a) program. Trefon Agasan, Board Member, Alaska Federation of natives, Inc., testified that "local administration of the [8(a)] program works very smoothly * * * and should be expanded. It would also enhance the ability of the 8(a) program to fulfill its mission * * * as a very important tool to help Alaska natives participate meaningfully in the private sector." Mr. Agasan was accompanied by Mike Carter, whose application for a waiver for his construction company was slowed down due to the confusion that resulted from processing the waiver at a distant SBA field office. Mr. Carter said that his company was going to miss a major construction season because of that confusion, resulting in a major financial impact on his business. Mr. Carter stated, "had the people been sitting here and we'd been dealing with them one on one I think they would have thought it made sense."

Like all states, in order for Alaska to continue to develop its economic base, it needs capital. According to Marc Langland, President, Northrim Bank in Anchorage, "As a state with a young economic base and an enormous geographic area, a relatively small population and only a handful of large communities, we have been constrained by a lack of capital over the last three decades." Except for large oil companies, Alaska's economic base is comprised of small businesses, which must compete with each other and larger markets to obtain capital for business start-ups and expansion. "By lowering overall credit risks and providing longer-term lending-options to borrowers, the SBA has enabled banks to make more loans, put more loan dollars into Alaska communities, and provide greater depth in financing to specific business sectors than otherwise would have been impossible for us to do," Mr. Langland said. Statistics provided at the hearing by Frank D. Cox, District, SBA Anchorage District Office, lent numerical proof to Mr. Langland's statement. "In the past 13 years, the SBA has approved 3,014 business loans and loan guarantees totaling over $622 million. The current portfolio is approximately 1,800 loans with a total value of $200 million.

An important item of discussion at this hearing focused on the need for the SBA to promote education and counseling to entrepreneurs through Small Business Development Centers for solving problems, rather than consultants who identify problems but do not offer any solutions. Many small business owners want to expand their businesses, but have no knowledge of what programs and aid is available to help them accomplish that goal.

The burden of government regulations on small businesses was also discussed. Dr. Joyce M. Murphy, D.V.M., emphasized that "we are still dealing with a burdensome and onerous regulatory process * * * OSHA is killing us." She gave an example of fire extinguishers in her clinic: "If I were to follow the OSHA regulations for the fire extinguishers in my practice, I will be opposed to my local fire code for the fire extinguishers they want me to use. I am going to get fined if OSHA walks in; I am going to get fined if my fire chief walks in. As a small business person, I don't have the time or money to fool around with this kind of stupidity." According to Pamela L. Marsch, Chief Executive Officer, Enterprise Brokers, and President, Electronic Solutions, who served as a tax chair for the 1995 White House Conference on Small Business, the IRS needs to be downsized and gave several suggestions for modifying the tax code including capital-gains tax modification "to encourage reinvestment in small business; and * * * no retroactive taxation."

As a result of this hearing and others, Chairman Bond introduced the Bond-Bumpers Substitute Amendment to the Small Business Programs Reauthorization Act, requesting reauthorization and additional funding for SBA programs such as the Small Business Development Centers and the 7(a) loan program. In the regulatory arena, he authored and Congress passed the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) to reduce the regulatory burdens on small businesses, and he co-sponsored the Occupational Safety and Health Reform and Reinvention Act, S. 1423.

"Entrepreneurship in America: Alaska's Small Business Environment"—Ketchikan, Alaska, August 17, 1995

This was the second of two hearings in Alaska that were part of the Committee's "Entrepreneurship in America" series of hearings. The philosophy behind these hearings is to give entrepreneurs who would not normally testify in Washington, D.C. a chance to express their opinions and concerns in their local business environment.

Chaired by Senator Bond, this hearing took place in Ketchikan, Alaska, at the invitation of Alaska Senator, Frank Murkowski. Senator Murkowski emphasized the importance of small business to the Alaska economy: "small business development * * * in Alaska is really what Alaska is all about. We have no resident accumulation of capital. Our capital input is dependent on individuals looking at opportunities in Alaska, not necessarily for markets, but for resource development."

The main issue raised by the witnesses at this hearing was the problem of government regulations negatively affecting small businesses. Meredith Marshall best summed up the feelings of many entrepreneurs throughout the country when she asked that the Senators "restrict the power of regulators. Make them hold to a standard of common sense and cost-effectiveness." The problems stated most often were the tax code and IRS' method of auditing, OSHA standards, required employer-paid health care insurance, and EPA regulations.

Scott Milner, CPA, said that an interpretation by the IRS on capital construction fund (CCF) contributions and Social Security taxes is unfair to the self-employed shipping vessel operators in Alaska and that "owners who establish CCFs pay double Social Security tax on the money earned that is contributed to CCFs." Another problem he presented was government employees who can deduct high-cost-of-living expenses from their taxes while those who work in the private sector, making the same salary, have to pay taxes on all of their salary. Steve Seley, Jr. of Seley Corporation, runs a sawmill and said, "we have OSHA problems where OSHA has come to our facility. We ask regularly for voluntary compliance checks. They give us a list of where we are out of compliance and then fine us anyway." Despite the voluntary check, he still has been given a fine of approximately $7,500. With regard to health insurance, Ernesta Ballard, Ballard & Associates, stated that "small business is competitively challenged in this area. Health insurance is generally inferior in scope, higher in price, much harder to come by, and easier to lose for small businesses. And, in addition, the costs for owners are not deductible [unlike that of large corporations]."

Reexamination of environmental regulation was proposed by Don Thornlow, President, Communications Unlimited, Inc., who stated in his written testimony that there needs to be a "complete review of laws and regulations * * * such as the Clean Water Act, Clean Air Act, Endangered Species Act, and National Environmental Policy Act." He also mentioned the problem of government seizure of property caused by environmental regulations, specifically in regards to wetlands. He recommended that federal policy be revised regarding the effect of regulations on private property and recommended that EPA review its unrealistic penalty assessments and utilize risk assessment and cost-benefit analysis in land decisions.

Another concern expressed at that hearing was the need for more funding for SBA loan programs and making the application process more efficient. Jerry Scudero, President, Taquan Air Service, Inc., expanded his airline in 1987 with a guaranteed loan from the SBA. He said, "I have a very sincere appreciation for the Small Business

Administration's efforts to stand behind me and help me do what I was not able to do by myself by providing me with those guaranteed loans through participating banks with requirements far less stringent that what the private banks needed to make those same loans." John M. Clifton, Vice President, First Bank, Ketchikan, noted that "two of our customers have grown in size to become major local employers, each of which are now employing over 100 people." David L. Coates, owner of several small businesses in Ketchikan emphasized that the SBA loan program "is an opportunity that is extremely important to the strong growth and development of not only a healthy economy in our community but our country as well."

Many of the concerns raised at this hearing were incorporated into Chairman Bond's SBREFA legislation, leveling the regulatory playing field for small business owners by providing them with input in the rule-making process and making federal agencies such as OSHA and EPA more accountable for their enforcement practices. In addition, Chairman Bond introduced and Congress passed his Substitute Amendment to the 1996 Small Business Programs Improvement Act, resulting in the expansion of SBA loan programs for FY 1997. Chairman Bond also co-sponsored the Occupational Safety and Health Reform and Reinvention Act, S. 1423, a measure designed to focus OSHA away from its "gotcha" enforcement approach to one that treats small business owners like partners in the regulatory process.

"Tax Issues Impacting Small Business"—Washington, D.C., September 19 & 20, 1995

On September 19 and 20, 1995, the Committee held two days of hearings focusing on the tax issues affecting small business. The hearings were timed so that Members would have an opportunity to listen to the tax priorities of small business owners prior to Congressional action on tax legislation and budget reconciliation. During the two days of hearing six tax issues vital to small business were addressed including: reducing the capital gains tax rate, estate tax relief, pension simplification, classification of independent contractors, increasing the expensing provision, and the deductibility of health insurance by the self-employed.

CAPITAL GAINS

The hearing began with testimony from Senators Hatch and Lieberman who discussed their bill, The Capital Formation Act of 1995, S. 959. Senator Hatch explained that capital-gains tax relief is important to small businesses throughout the country and that a cut in the rate is an integral part of balancing the budget. The effect of a rate cut will be economic growth and job creation. Senator Hatch noted that, "As we all know, a healthy and growing economy requires the ready availability of capital for new and expanding entrepreneurial activity. And the job creation generated by this entrepreneurial activity is one of the keys to increased cash tax flow to our Treasury." Senator Hatch went on to say that some economists estimate that this country has about $8 trillion of unrealized capital gains and that S. 959 would go a long way towards unlocking a large portion of that wealth, creating a tremendous benefit for the economy.

Senator Hatch pointed out that some Members argue that a capital-gains tax cut unduly benefits the wealthy. He used Treasury Department figures to show that, although a cut will benefit some who are wealthy, a cut will also benefit lower and middle income Americans, as well. The Senator outlined for the Committee the provisions of S. 959:

1. Reduces by 50% the taxable capital gain on assets held at least one year.
2. Reduces the maximum corporate capital-gains tax rate to 25%.
3. Considers the loss on the sale of personal residence as a capital loss.
4. Expand the 1993 provisions championed by Senator Bumpers that were designed to spur investment in expanding and new start-up companies. If a taxpayer invests in a start-up company and holds the stock for between one and five years there is a 50% capital-gains deduction; if the stock is held for more than five years there is a 75% deduction. Or if the taxpayer decides after five years to sell and invest the proceeds in another small business, then the gain on the sale of the first stock is deferred until the second stock is sold.

Senator Hatch indicated that he believes that the targeted capital provisions would do a great deal towards increased investment and job creation in small business.

Senator Lieberman echoed many of the points raised by Senator Hatch. He also pointed out that the 75% exclusion on gain from the sale of a qualified small business investment builds on the 1993 legislation, which up to now has not produced the results that they would have liked. S. 959 is an improvement because it removes some of the inhibitions to those with capital to invest in small businesses. He also cited Joint Tax Committee estimates reflecting the proposal's relatively low cost as compared with the potential return. Senator Lieberman concluded by saying that a large number of people will benefit including "middle class people who own a small business, own a farm, own a little piece of investment property, or have a share of a mutual fund, or one of the millions of Americans who are part of a stock option plan where they work." Therefore, the legislation has a broad based, positive effect on society in this country.

Tom Wiggans, President and Chief Executive Officer, Connective Therapeutics, on behalf of the Biotechnology Industry Organization, also testified regarding a reduction in capital gains. Mr. Wiggans spoke in support of the two tier system contained in S. 959, noting that the first tier incentive is for all investors while the second tier is for venture capitalists, recognizing that not all investments are the same. "Venture capital investments typically involve tremendous risk, yet potentially, they provide the greatest economic and social benefits by funding truly novel technologies that create whole new industries and revolutionize our standard of living." He urged the Members to pass the Hatch-Lieberman legislation.

ESTATE TAX RELIEF

Ann Parker Maust, Ph.D., President, Research Dimensions, Inc. and a member of the National Federation of Independent Business, testified regarding her experience with the estate tax laws. Dr. Maust's parents started a family agricultural business (oranges and cattle) in Florida. Due to an appreciation in the land underlying the business, the family realized that they would have to save a considerable sum of money in order to pay the estate taxes on the family business. She testified that several unsettling questions arise when a family is in this situation: "What would be the total cash requirement that we would face, not only in terms of the tax payment, but also the payment for legal advise and support? Would we have to mortgage any or all of the land underpinning the business in order to come up with the estate tax cash requirement? What would happen to planned business expansions and investments as we attempted to hoard cash and/or mortgage land in an attempt to deal with these estate tax requirements?"

Dr. Maust went on to say that the security her parents thought they had developed over the years was threatened as was the future of the business. With that, she testified in support of The American Family Owned Business Act, S. 1086, which would exempt up to $1.5 million of a family-owned business from the estate tax. The legislation would relieve her family's fear and would allow them to continue to operate the business. More importantly, Dr. Maust testified that the bill would provide them with "more of an opportunity to grow the business, using cash reserves for planned business expansion and investment, thus contributing to job generation and productivity, and ultimately to a healthier economy."

Michael Roush, Director of Federal Government Relations for the Senate at the National Federation of Independent Business, also testified regarding the estate tax. In the view of small business owners, the estate tax is a form of double taxation that discourages businesses from growing. Small business owners ask "why should family businesses, and jobs be destroyed to pay estate taxes. The estate tax is one of the most intensely disliked provision in the Tax Code by small business owners, and S. 1086 will go a long way in helping businesses survive." Mr. Roush concluded by urging Members to co-sponsor the bill and to include it in the reconciliation package.

Charles Kruse, President of the Missouri Farm Bureau, and Phyllis Gardner, Chairman of the National Cattlemen's Association Tax and Credit Committee, both testified in support of S. 1086 and regarding the estate tax as it relates to farms, ranches, and rural communities. Ms. Gardner testified that rural economies are largely comprised of family-owned businesses. "The viability of main street in rural America and the surrounding farms and ranches is directly linked to their ability to stay in business during generational change. The opportunity to pass your business to the next generation is a life-long goal for most of us involved in agriculture. Tradition and family continuity are not trendy terms in rural America. It is how we live." She went on to say that S. 1086 will work and will help keep the backbone of rural America together from one generation to the next.

INDEPENDENT CONTRACTORS

In his opening statement, Chairman Bond said that the uncertainty and unfairness surrounding the worker classification issue has been a concern of taxpayers for many years. Today, Internal Revenue Service agents are using a 20-factor test that is a nightmare for small business. The IRS has forced businesses to reclassify approximately 400,000 independent contractors as employees and are now converting almost 2,000 independent contractors into employees each week. The Chairman recognized that finding a solution to this problem will not be easy, but was essential because the status quo is unacceptable. Taxpayers are worried, and the policy is hurting the economy by stifling job growth and expansion through fear.

The Chairman quoted the Commissioner of Internal Revenue, Margaret Richardson, who told delegates to the White House Conference on Small Business that the IRS "does not care whether someone is an employee or an independent contractor as long as they properly report their income." The Chairman concluded that Congress needs to come up with a legislative solution so that we can move the IRS out of this "de facto" role of setting employment policy and back into its role of revenue collection.

The testimony regarding independent contractors began with Senator Nickles who at one time ran a small business and who in conjunction with Chairman Bond planned to introduce the Independent Contractor Tax Simplification Act. Senator Nickles testified that it is vitally important for Congress to clarify who is an independent contractor and who is an employee. The 20-point common-law test is not working, and he pointed out that the "General Accounting Office calls the common-law test, 'Unclear and subject to conflicting interpretations.' Even the Treasury Department has testified, 'Applying the common-law test on employment tax issues does not yield clear, consistent, or even satisfactory answers and reasonable persons may differ as to the correct classification.'" The Senator indicated that both the IRS and Congress are at fault and the Congress needs to resolve the issue through legislation. Senator Nickles went on to outline the three-part test contained in the legislation and indicated that an effort was made to simplify the definition of who is an independent contractor. He closed by saying that the issue is vitally important and solicited input and support from other Members to ensure passage of the bill.

The Committee also heard testimony from Thomas Shopa, CPA, President of McBride, Shopa & Company, Raymond Kane, President of Pisa Brothers Travel Service, and Paul Hense, CPA and President of Paul Hense, CPA. The witnesses all spoke in support of a change in the law that would simplify and clarify the definition of an independent contractor for small business. Mr. Kane spoke of his own person experience during IRS examinations of his business and their resulting assessment of some $274,000 in penalties for the years 1992, 1993 and 1994. Mr. Hense testified that as a CPA he tells his clients "If you can avoid it, do not have employees. It is more of a hassle than it is worth. * * *" And Mr. Shopa testified that he represent clients through the IRS appeals process and that appellate conferees will right up front advise the business that they will lose the case. Each of the three witnesses had compelling testimony and significant points regarding the horrendous state of the law surrounding this issue and the need for its revision.

EQUIPMENT EXPENSING

John Galles, President of National Small Business United, and John Satagaj, President of the Small Business Legislative Council, both testified regarding the equipment expensing provision under Section 179 of the tax code. Under current law, small businesses may elect to expense rather than depreciate the first $17,500 of business property. Small business would like to see that amount significantly increased. Mr. Satagaj testified that "Small business finances many of its capital asset investments from retained earnings. Waiting 5 or 7 years to recover that investment is a significant deterrent to further growth and expansion." He went on to advocate increasing the amount to $50,000. Mr. Galles pointed out that the increased deduction would help "cash-strapped small businesses" that would like to grow and enlarge their capital base. An increased ability to expense the business investment would indeed enhance the long-term productivity of the business.

SELF-EMPLOYED HEALTH INSURANCE DEDUCTION

Bennie Thayer, President of the National Association for the Self-Employed, testified regarding the health-insurance deduction for the self-employed. Mr. Thayer commended the 104th Congress for reinstating the health-insurance deduction and making it permanent. He also applauded the increase in the deduction to 30% for 1995 and thereafter. However, he urged the Committee to go the next step and to increase the deduction to 100%. Currently, corporations may fully deduct the cost of the health-insurance premiums paid for their employees. Later in his testimony, Mr. Thayer reported that the deduction is not only important for tax equity purposes, "but it would also greatly assist the self-employed in the purchase of health insurance." He cites that nearly three million self-employed are uninsured and that small firms cannot afford to cover themselves or their dependents. "If a self-employed individual could deduct the full cost of health care coverage, the number of uninsured Americans should decrease dramatically. If Congress really wants to increase health insurance coverage of small businesses and their employees, studies show that a full deduction is the most fair and effective way to do it."

More specifically, Mr. Galles cites a 1983 study by the Employee Benefits Research Council indicating that more than nine million self-employed individuals are without insurance, that is one in four of all the uninsured. "It is also a fact that enabling business owners to provide insurance for themselves (a worthy goal in itself) greatly enhances the likelihood that they will provide insurance for their employees."

PENSION SIMPLIFICATION

The cost of starting and maintaining a pension plan for the benefit of employees is extremely high for small business. Mr. Roush, of the National Federation of Independent Business, testified that the "rising administrative costs and legal complexity of pension and retirement plans are forcing small business owners to drop their plans in ever increasing numbers." Given the meager savings rate in America, Congress should be encouraging employers to establish retirement programs, but in a desire to insure that all plans are fair, the current law makes it difficult for employers to offer plans at all.

The Majority Leader, Senator Dole, was unable to attend the hearing but submitted his statement for the record, which among other things, outlined his new proposal to increase savings among America's small business through the Savings Incentive Match Plan for Employees (SIMPLE). According to Senator Dole's testimony, the SIMPLE Plan would be available to small employers who have no more than 100 employees. Eligible employees could contribute up to $6,000 each year, and employers would be required to match employee contributions dollar-for-dollar up to 3% of compensation, allowing employees to save up to $12,000 per year. In addition, SIMPLE plans would not be subject to the nondiscrimination or top heavy plan rules. Senator Dole's testimony also noted that the SIMPLE pension proposal had the support of many small business organizations, including the National Federation of Independent Business, the U.S. Chamber of Commerce, and the Small Business Council of America.

"Revitalizing America's Rural and Urban Communities"—Washington, D.C., October 19, 1995

On October 19, 1995, the Committee held a hearing to discuss possible means of bringing small businesses and jobs to impoverished areas of the United States.

Chairman Bond opened the hearing by stating that the role of the small business community is critical to revitalization of impoverished areas of the nation. He noted that "No amount of training dollars can insure the revival of these communities if there are no jobs. And we must have businesses, in particular small businesses, locating and thriving in these areas if we are to provide these jobs." Chairman Bond briefly summarized his proposal for Historically Underutilized Business Zone (HUBZones), defined as areas within metropolitan and rural communities that have very low income and high unemployment. The goal of HUBZones is to encourage small businesses to relocate to and employ people in low income, economically distressed areas by allowing these businesses to receive a special preference or set aside in bidding on federal government contracts.

Senators Lieberman and Abraham testified in favor of their bill the Enhanced Enterprise Zones Act of 1995, S. 1252, which expands the Enterprise Zones Act of 1993 and "supercharges" the nine Empowerment Zones and 94 Enterprise Communities. Senator Lieberman specified that the bill "provides a zero rate of capital gains tax on the sale of any qualified zone stock, business property, or partnership interest that has been held for at least 5 years within an enterprise zone or Enterprise Community." The bill also provides limited regulatory relief, low-income home ownership, and vouchers for school choice.

Senator Abraham stated that the philosophy behind the bill is supporting the "notion that giving jobs, creating tax cuts and other economic incentives to residents and businesses, particularly small businesses in distressed areas. * * *" He expressed his belief that Enterprise Zones do work, stressing that "35 States and the District of Columbia already have enterprise zones that have produced over 663,000 jobs and $40 billion in capital investment." Former Congressman and Secretary of Housing and Urban Development, Jack Kemp said that "a good start would be to pass the enhanced enterprise zone bill" and couple it with a bill to do away with the capital gains tax to "encourage more jobs, more growth, more small business and more entrepreneurial opportunities." He said the best way to create jobs is to "get men and women to leave their existing business and take a risk to start a new business."

Addressing the problems of Enterprise Zones, Senator Bond gave an example from Missouri. He noted that, although 8,800 jobs had been created in the areas designated as enterprise zones by the end of 1984, only one area was rural, the rest were central city areas of St. Louis and Kansas City. Senator Bond proposed three ways in which to enhance the effectiveness of the enterprise zone program in reaching more areas. He suggested that the government needs to find criteria for designating zones, whether they are called "HUBZones" or "Enterprise Zones," which combine high unemployment with high poverty. Second, he stated that "we have run into the problem at the State level the tax incentives are not enough, and at the Federal level any time you are trying to provide tax incentives you run into the problem of revenue scoring. The Treasury Department * * * always puts limits on the amount available." To help solve this problem, HUBZones would use the concept of set-asides to give any enterprise in a HUBZone an opportunity to bid on federal government contracts. Finally, in response to the complaint that the 8(a) program does not always bring jobs to the areas of highest need, Senator Bond suggested designating areas for companies to receive benefits from the 8(a) program, away from the congressional scoring system.

In written testimony, Senator Kay Bailey Hutchison outlined her bill, S. 743, which "utilizes a targeted, limited tax credit to businesses to help defray their cost of construction, expansion, and renovation. The legislation builds on the empowerment zone/enterprise community program now unfolding in more than a hundred communities across the nation." She stated that other similar programs have been very valuable to the public. For example, the Historic Rehabilitation Tax Credit in Fiscal Year 94 "produced nearly 21,000 jobs, and among 524 projects and leveraged $483M in private investment from a federal revenue cost of $97M." The success is even better for the Low Income Housing Tax Credit. According to HUD figures "for every 100,000 new housing starts, 170,000 jobs are created." Mr. Kemp, who is heading up a tax commission for Senate Majority Leader Dole and House Speaker Gingrich recommended not only cutting the capital gains tax, but also a tax credit to offset the payroll tax. Mr. Kemp said that the capital gains tax is "not a tax on the rich. It is a tax on the poor who want to get rich." Randall C. Gideon of the American Institute of Architects said that neighborhood rebuilding is a local enterprise dependent upon public participation and that S. 743 “would fill a gap in the incentives for the revitalization of commercial infrastructure” and “an effective capital base incentive for non-historic commercial projects in targeted areas is a missing piece of the incentive package that must be available to reduce the risk of investment.”

Senator Ashcroft testified that “one of the first things that Government should do, however, is to soberly assess its contribution to the problems in the cities.” He further stated that “in its urge to help, Government has done many things that have been tremendously counterproductive.” Senator Ashcroft proposed that regulations, particularly EPA regulations, have contributed to the problem. “These programs have cleaned the soil, but they sullied the environment. They have addressed certain risks but they have forgotten about unintended consequences.” Senator Ashcroft introduced the Urban Regulatory Relief Zone Act, S. 1184, to allow a mayor with a city population of 200,000 or more to establish a commission to assess the regulations and petition for regulatory waivers, giving the people more control and making the environment more business friendly.

From a community standpoint, Mark Bendick, Jr., PhD., Project Director, Committee for Economic Development, said that “it is appropriate not to use a single criterion, such as resident’s low income alone, to target benefits or define eligibility for benefits in the bills, but instead the emphasis should be on finding the simultaneous presence of multiple problems.” He said that “historically such lone ranger efforts are relatively ineffective in revitalizing distressed communities.” Community revitalization needs participation by the residents and community leaders to succeed.

“THE COST OF REGULATIONS ON SMALL BUSINESS”—WASHINGTON, D.C., OCTOBER 31, 1995

On October 31, 1995, the Committee held a joint hearing with the House Committee on Small Business (the first in two decades) on a report by the Small Business Administration’s Office of Advocacy on the relative impact of regulatory compliance costs on small business. Numerous studies have examined the impact of regulations on business in general. For example, the cost of state and federal regulations on the business community has increased from an estimated $330 billion in 1988 to an estimated $400 billion today. The Office of Management and Budget has reported that taxpayers expended 6.64 billion hours on federal paperwork in fiscal year 1992, including some 5.6 billion hours for taxpayer compliance with IRS regulations.

While these overall burdens are well documented, little research has been done on the relative burdens faced by small business. In 1994, Congress requested that the Chief Counsel for Advocacy conduct a “study or the impact of all Federal regulatory, paperwork and tax requirements on small business” (P.L. 103–403, Section 613). The hearing provided an opportunity for Jere Glover, Chief Counsel for Advocacy, Office of Advocacy, Small Business Administration, to testify on the findings of the report, “The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress.” As Mr. Glover testified, the report sought to answer three basic questions: (1) does the burden of regulation fall more heavily on small firms, (2) if so, is it good public policy to regulate in such a way as to give large firms a competitive cost advantage in the marketplace, and (3) if the answer is no, how can the regulatory process be changed to help achieve a level playing field.

The report found that regulations do fall more heavily on small business. While firms with fewer than 500 employees generate some 50% of total employment and sales, they bear 63% to 67% of the total burden of regulations, paperwork, and tax compliance costs. Small businesses pay an average of 50% to 80% more per employee than big business to comply with federal regulations. Research conducted for the Chief Counsel by Thomas D. Hopkins, a leading researcher in the costs of regulations, showed that the average cost of regulations per employee in 1992 was $5,532 for firms with less than 20 employees, $5,298 for firms with 20–499 employees, and $2,979 for firms with over 500 employees. Thus, the regulatory burden on small businesses is over 80% greater than for large business. In the manufacturing sector, regulatory cost were substantially higher, averaging $9,016 per employee for firms with less than 20 employees, $10,605 for firms with 20–499 employees, and $4,855 for firms with over 500 employees.

As to the second question, the report found that the disproportionate impact of regulations on small businesses gives large firms a competitive cost advantage in the marketplace and serves as a disincentive to small business formation, growth, job creation, and innovation. The report concluded that the "inequitable allocation of regulatory costs is not good public policy." While regulations may confer benefits on society, "This inequitable cost allocation gives large firms a competitive advantage, a result at odds with the national interest in maintaining a viable, dynamic, and progressive role for small businesses in the American economy." Furthermore, "If the nation's goals are to generate employment and innovation, improve global competitiveness, and encourage economic growth, government action should not impose disproportionate costs burdens on the small business sector to solve other problems."

As to suggested reforms, the report first surveyed the current efforts to reduce the impact of regulation of small business. It noted that Administration's efforts to ease the regulatory burden were undertaken primarily through Executive Order 12866, which confirms the requirements, first established by President Reagan, that regulations undergo a cost-benefit analysis, that the benefits of a regulation should justify its costs, and that agencies should tailor regulations to impose the least burden on society, including businesses of different sizes. In addition, the Administration's National Performance Review directed federal agencies to conduct a page-by-page review of all regulations and to eliminate or modify those regulations in need of reform. Finally, the Administration has promised a 25% reduction in the EPA's paperwork burden.

The report noted that regulatory reform was among the most important issues at the 1995 White House Conference on Small Business. The delegates recommended requiring cost-benefit analysis and scientific risk assessment of all new regulations, enhanced input from small business in the development of regulations, paperwork reduction, periodic review and sunset of regulations, and fairer enforcement policies. The most important regulatory reform issue at the conference was judicial review for the Regulatory Flexibility Act. The Act requires government agencies to analyze regulatory alternatives that minimize the impacts on small businesses whenever there is likely to be a significant economic impact on a substantial number of small entities. While the Regulatory Flexibility Act has saved small business many millions of dollars in regulatory costs, federal agencies have not fully complied with the requirements in part because compliance with the Act is not subject to any form of judicial review.

As noted in the report, the regulatory reform legislation in both the House and Senate provided for many of the regulatory reforms sought by the White House Conference on Small Business including judicial review of the Regulatory Felxibility Act, risk assessment, cost-benefit analysis and (in the Senate bill) periodic review of regulations. While the Senate regulatory reform bill, S. 343, was opposed by the Administration and the subject of an extensive filibuster, the report noted that Congress did reauthorize the Paperwork Reduction Act. The new law requires the Administration to reduce paperwork requirements by 10% per year in 1996 and 1997 and by five percent each year thereafter. In a significant change sought by small business, the new law extends coverage of the Paperwork Reduction Act to include federal agency disclosure requirements and information required to be disclosed to third parties.

The report found that "several obstacles to curbing the rising cost of regulations remain," citing the current backlog of regulatory requirements such as under the Clear Air Act, as well as additional regulatory requirements that may be in new legislation. In attempting to answer the third question, the report found that "despite more than 13 years of experience with the Regulatory Flexibility Act, public policy makers need additional direction to reconcile their regulatory decisions with the national goals of preserving competition through the growth of small business." The report concluded that, "The need for regulatory reform through initiatives such as amending the Regulatory Flexibility Act is great."

In response to the findings of the report, Chairman Bond stated, "this report breaks new ground in assessing the burden placed on small business by government regulation relative to large business. It confirms what many of us have long suspected—and what our series of field hearings suggested—that small business bears more than its fair share of the cost of regulations. Our field hearings have clearly shown that this disproportionate burden creates series obstacles for small businessmen and women across the country. The need to reform regulations and the laws that produce them could not be more clear."

"THE IMPACT OF RAIL MERGERS ON SMALL SHIPPERS"— WASHINGTON, D.C., NOVEMBER 8, 1995

On November 8, 1995, the Committee held a second joint hearing with the House Committee on Small Business on the effect of past and proposed railway mergers and consolidations on small shippers. The rail industry is currently going through a period of so-called "mega-mergers" between freight carriers. These include the recently completed merger of the Burlington Northern with the Santa Fe ($7.8 billion in revenues) and the proposed merger of Union Pacific with Southern Pacific ($9.1 billion in revenues). These mergers will reduce the number of major rail carriers in much of the western half of the country.

Freight shippers may stand to gain from the greater efficiencies created by these mergers. Some shippers, particularly high volume shippers moving freight between major destinations, expect these mergers to result in improved service and reduced rates. However, many shippers, particularly small shippers, have expressed concerns to the Committee that these mergers may lead to a less competitive rail industry with higher freight rates and/or reduced service.

Under legislation enacted earlier in 1995, the Interstate Commerce Commission (ICC) ceased to exist at the end of the year. Separate legislation, enacted at the end of 1995, transferred the powers of the ICC to a newly established board at the Department of Transportation. The new board will review rail mergers and consolidations using factors similar to those currently considered by the ICC.

The first panel consisted of Dan Glickman, Secretary of Agriculture, who testified on the importance of a competitive rail transportation system to the agricultural sector and the anticompetitive problems posed by rail mergers. Secretary Glickman, in response to questions by Senator Bond, also expressed his concern over the shortage of rail cars and the effects of that shortage on the agricultural sector.

The second panel consisted of C. Phillip Hoffman, Secretary, Hoffman & Reed; William York, Manager, Lange Company, LLC; James F. Jundzilo, Transportation Manager, Tetra Chemical Company; Duane "Butch" Fischer, President, Scouler Grain Company; Ned Leonard, Manager of Communications and Governmental Affairs, Western Fuels Association; Ed Emmet, President, National Industrial Transportation League; Curtis Grimm, Professor, College of Business and Management, University of Maryland; and Richard J. Barber, Barber & Associates.

One of the issues raised by a number of witnesses was the number of shippers that will see their competitive freight alternatives reduced from three options to two or from two options to one. For example, the Committee received testimony that the proposed Union Pacific-Southern Pacific merger would reduce the rail options from two carriers to one on routes connecting a total of 164 market areas where Union Pacific and Southern Pacific handle $1.6 billion in freight. In comparison the Burlington Northern-Santa Fe merger affected 20 market areas with a combined revenue of only $165 million. Mr. Barber disputes these figures and testified that the level of two to one reductions would be significantly less.

Another issue raised by several witnesses who are small volume grain shippers was the supply and distribution of rail cars. These witnesses testified that there is a shortage of rail cars in the Midwest for grain shipments, and they worry that they will not have access to rail cars in the needed numbers and at the required times. Even if these small shippers have access to the needed rail cars, they are equally concerned with competitive rates. While some commodities can move easily by truck, others such as grains, fertilizers, mineral ores, bulk chemicals and aggregates depend very heavily on rail transportation. Shippers of these products often find it difficult to shift to truck or barge transportation and are concerned about maintaining competition among rail carriers.

The Committee also heard from small shippers, particularly in rural areas away from the main rail lines, who worry that these mergers may accelerate the trend of emphasizing high-volume routes at the expense of lower-volume routes. Small shippers testified that they are particularly concerned that the discount rates frequently offered for shipments of 100 or more rail cars will make smaller shipments, and small shippers, non-competitive. In addition, smaller shippers are concerned that even on major routes, the merged rail carriers may be less willing to stop to pick up and deliver small volumes of freight. These shippers worry about the possibility that the freight rail service to their facility might end or be drastically reduced, and that the rail line might simply be abandoned by the newly consolidated rail carrier.

Senator Bond noted during the hearing that, “These small shippers have a vital interest in maintaining high quality and competitively priced freight rail service in this era of mega-mergers in the rail industry. While they recognize that these mergers present opportunities for more efficient rail service, they are also concerned that these mergers may adversely affect small shippers.” The Chairman highlighted the situation of grain elevators throughout much of the Midwest. “Many of these elevators are totally dependent on rail transportation to get their product to market and to import fertilizer at competitive rates.” He emphasized that competitive rail service is essential not only to the grain elevator operators, “but to the hundreds of farmers who depend on the local grain elevator to get their corn, soy beans and wheat to market.”

“SMALL BUSINESS AND OSHA REFORM”—WASHINGTON, D.C., DECEMBER 6, 1995

On December 6, 1995, the Small Business Committee and the Labor Committees held a joint hearing on the effect of the Occupational Safety and Health Reform and Reinvention Act, S. 1423, on small businesses. Chairman Bond described Occupational Safety and Health Administration (OSHA) reform as an extremely important issue for small business and explained that small businesses do not have the resources to hire expensive consultants to arm themselves for a game of “gotcha” with OSHA. Chairman Bond said that the provisions of S. 1423 recognize that most employers want to comply with OSHA’s regulations. Employers want safe workplaces because of workers compensation rates and because their employees are their most important assets. The legislation forces OSHA to leverage its resources so that strong enforcement is directed at employers that are not voluntarily complying. Those employers that have effective safety and health programs would be able to focus on voluntary compliance through inspections by certified third parties and proof of fewer than average accidents.

Senator Kennedy, ranking member of the Labor Committee, expressed concern that the legislation exceeds President’s Clinton goals for OSHA Reinvention. Senator Kennedy stated that he was in favor of helping small business comply with OSHA, but that he opposed S. 1423 because it weakens employee protections.

Senator Kassebaum, Chairman of the Labor Committee, commended Assistant Secretary Joseph Dear for his work in "reinventing" OSHA and explained the importance of codifying some of those provisions. Senator Kassebaum responded to Senator Kennedy's concerns by explaining that most of the bill's provisions codify some of the OSHA programs designed to help small business. S. 1423 is designed to change businesses' relationship with OSHA from an adversarial to a working relationship.

The Committee heard testimony from a panel of four small business owners who described their involvement with OSHA and offered suggestions for reform legislation. Mark Hyner, President of Whyco Chromium, and Daniel Richardson, owner of Latta Road Nursing Homes, were delegates at the White House Conference on Small Business. Both testified about the priorities identified for OSHA reform at the White House Conference and said that S. 1423 contained many of these priorities. Mr. Hyner stated that most small businesses support the goals and intent of OSHA, but that every business owner that he knows has at least one OSHA horror story. Mr. Hyner explained that in his experience, OSHA rarely leaves a facility until the inspector finds a way to fine the small business. Mr. Richardson emphasized that the use of third-party consultants results in safer workplaces because consultants, unlike OSHA inspectors, understand the demands of particular businesses. Mr. Richardson stated that OSHA and its citation-based structure were flawed and that legislation is necessary to ensure that the American workplace is safer with OSHA than without it.

The Committee heard testimony from two additional small business owners, Earl Bradley, President of EBAA Iron, and Mike McMichael, President of McMichael Company. Mr. Bradley noted that good safety practices not only save lives, but are good business, and he explained the importance of eliminating OSHA's "quota mentality." Mr. Bradley said that provisions allowing employee participation in safety programs, codification of OSHA's safety programs, third-party consultation, and allowing abatement of hazards were important parts of S. 1423, which he supported. Mr. Bradley also stressed the importance of leveraging OSHA's resources to increase the focus on serious violators. Mr. McMichael testified about OSHA's practice of citing general contractors for violations when a sub-contractor's employees cause the condition leading to the citation. Mr. McMichael explained that he is a general contractor who has no employees, yet OSHA has cited him for the violations of sub-contractors.

The Committee heard testimony from Paul Middendorf, Director of the Georgia OSHA Compliance Program. Mr. Middendorf testified about the importance of OSHA consultation for small business. The Georgia program allows small businesses to request help from OSHA in developing safety and health programs and in identifying hazards. The Committee also heard from John Cheffer, Chairman of the National Governmental Affairs Committee on the American Society of Safety Engineers. Mr. Cheffer expressed support for provisions in the bill that allow inspections by certified third-party consultants. Mr. Cheffer explained that it is necessary for OSHA to look to the private sector for assistance because of limited resources. David Carroll, Director of Safety at Woodpro Cabinetry, testified about his experience in OSHA's Voluntary Protection Program (VPP). Mr. Carroll explained that consultation and partnership with OSHA is important to small business and expressed support for the codification of the VPP program.

The Committee also heard testimony from two union representatives. Robert Georgine, President of the Building and Construction Trades Department of the AFL–CIO, said that he disagreed with the legislation's underlying theme that workplaces would be safer if government activity was replaced with voluntary compliance. Mr. Georgine suggested that the best way to improve safety is to give OHSA a bigger budget for more inspectors and to strengthen employee rights. Deborah Berkowitz, Director of Occupational Health and Safety for the United Food and Commercial Workers, testified that the bill ignores the fact that enforcement is the key to preventing injuries. Ms. Berkowitz admitted that there are cases in which OSHA has "gone overboard" and been "overzealous," and she said that the key challenge is allocating OSHA's scarce resources.

"PROPOSALS TO STRENGTHEN THE SMALL BUSINESS INVESTMENT COMPANY PROGRAM"—WASHINGTON, D.C., DECEMBER 12, 1995

On December 12, 1995, the Committee held the second in a series of three hearings to identify and evaluate steps that the SBA has been taking to improve the Small Business Investment Company (SBIC) program, and to begin considering other improvements requiring legislation over which the Committee has jurisdiction. Senator Burns of Montana stated at the outset of the hearing that he hoped the panelists would "come to us * * * with suggestions and solutions for how to reduce the default rate and make these federal dollars more broadly utilized." Senator Harkin also noted that, "the SBIC program provides a crucial niche in credit availability, namely, venture capital. Without venture capital, the ability of business outside of the norm, often the most creative, cannot grow and prosper. This is particularly true in rural areas, such as in my home state of Iowa, which are often served by small banks that are limited in the types of loans they are able to make to their customers."

Legislation passed in 1992 accomplished a number of important objectives, including improving the operating environment for SBICs, and reducing the risk of loss of taxpayers. The legislation also served to raise the licensing standards, and increase minimum capital requirements, making SBICs viable economic entities. While these were steps in the right direction, Chairman Bond emphasized that more can be done.

Many of the panelists' recommendations were to operate the SBIC program using common sense, sound business practices. Keith R. Fox, Chairman of the National Association of Small Business Investment Companies, suggested that privatizing or "out sourcing" certain parts of the program, for example, the licensing and examination process, would not only save money but also improve the quality of the function. Stanley W. Tucker, a member of the Board of Directors of the National Association of Investment

Companies, concurred that privatization should be considered. All of the panelists agreed that in the current environment of belt tightening, the money that is available needs to be used as efficiently as possible.

During this period of federal spending reductions, it is unlikely that this program will receive additional funds through appropriations. “But if we legislate strict licensing and oversight requirements to ensure businesslike and accountable operations by SBICs and by those at SBA implementing the program, I believe we can reduce the credit subsidy rate and stretch the available appropriations much further,” Chairman Bond noted.

Many panelists favored eliminating Specialized Small Business Investment Companies (SSBICs). The current distinctions between SBICs and SSBICs contributes to a negative perception of SSBIC licenses, which makes it harder to attract private capital. As a result, the panelists conclude that the function of the SSBICs would be absorbed by regular SBICs.

Many of the panelists’ concerns were addressed by S. 1784, a bill proposed by Senator Bond that would expand and improve the SBIC program.

“S. 917 AND S. 942: IMPLEMENTING THE WHITE HOUSE CONFERENCE ON SMALL BUSINESS RECOMMENDATIONS ON REGULATIONS AND PAPERWORK”—WASHINGTON, D.C., FEBRUARY 28, 1996

On February 28, 1996, the Committee held a legislative hearing on two bills designed to implement recommendations of the White House Conference on Small Business on paperwork reduction and regulatory reform. The Small Business Advocacy Act, S. 917, was introduced on June 13, 1995 by Senator Domenici, and the Small Business Regulatory Fairness Act, S. 942, was introduced on June 16, 1995 by Chairman Bond. Both bills were referred to the Committee on Small Business. The purpose of the hearing was to solicit input from delegates to the White House Conference on Small Business, the Administration, and the small business community generally on how best to implement the White House Conference on Small Business recommendations. In addition, the Committee sought specific comments on the legislative language of both S. 917 and S. 942 and on a February 8, 1996 staff discussion draft of an amendment combining elements of both bills.

The Committee first heard from Senator Russ Feingold who testified in favor of amending the Equal Access to Justice Act to make it easier for small business to recover their attorney’s fees in litigation against the government and to raise the statutory rate for attorney’s fees. He testified in support of the amendments to the Equal Access to Justice Act to limit the government’s “substantially justified” defense, but urged the Committee to go further and eliminate the substantial justification threshold altogether.

The first panel consisted of three of the regional regulation and paperwork chairs of the White House Conference on Small Business: Scott J. George from SBA region 7, Rosemary Reed from SBA region 3, and Scott Holman, Sr. from SBA region 5. These witnesses described the disproportionately heavy regulatory burdens they face as small business owners and those faced by small business generally. They also described the White House Conference recommendations to reduce regulatory burdens, including the need for a new approach to regulating based on cooperation, not confrontation, for fitting regulations to the size of the business, and for periodic review of regulations. Additionally, these witnesses testified on the need to make regulators more accountable for their actions. They also emphasized the need for the provisions of S. 942 allowing judicial review of the Regulatory Flexibility Act and those expanding the Act to include interpretative rules of the IRS. These witnesses also made a number of suggestions for technical modifications to the discussion draft.

The second panel consisted of Kent P. Swanson, President of Nurses Available, Inc. on behalf of the National Federation of Independent Business, Victor N. Tucci, President of Three Rivers Health and Safety Inc. on behalf of National Small Business United, H. Daniel Pincus, President of HDP Industries on behalf of the National Association of Homebuilders, Wendy Lechner, Legislative Director of the Printing Industries of America, Inc. on behalf of the Small Business Legislative Counsel, and James Morrison, Senior Policy Advisor of the National Association for the Self-Employed. The panelists testified on the need for judicial review of the Regulatory Flexibility Act and for expanding the coverage of the Act to include IRS interpretative rules. Other testimony supported the requirement for "Plain English" guides to assist small businesses in their efforts to comply with regulations.

The second panel also described the adversarial relationship that often exists between government agencies and small businesses, and the witnesses testified about the need for a more cooperative and less punitive approach to regulatory compliance. The panel favored the provisions in the bill establishing agency programs to reduce or waive fines on small businesses for first time violations and establishing an enforcement ombudsman to record the problems that small businesses have with enforcement officials. Other testimony described how small business owners feel blackmailed into paying unjustified fines because they cannot afford to go to court and fight the government, and the need for the provisions of the bill that amend the Equal Access to Justice Act to make it easier for small businesses to recover their attorney's fees. Finally, the panel made a number of suggestions on improving the text of the discussion draft.

At the conclusion of the hearing, Chairman Bond announced his intention to move expeditiously to a markup of S. 942, and to amend the bill to incorporate the comments of the witnesses at the hearing. He also indicated his desire that the legislation move forward on a bipartisan basis under his leadership and that of Senator Bumpers. A markup of the S. 942 was held on March 6, 1996.

"S. 1574, THE HUBZONE ACT OF 1996: REVITALIZING INNER CITIES AND RURAL AMERICA"—WASHINGTON, DC, MARCH 21, 1996

On March 21, 1996, the Committee held a hearing to evaluate the Historically Underutilized Business Zone (HUBZone) Act of 1996, S. 1574. The hearing allowed small businesses in Washington, D.C. to testify about how the HUBZone Act would affect their businesses and community, and that of inner cities and rural counties of America.

Citing the importance of providing incentives to encourage the revitalization of decaying inner cities and poor rural counties, Chairman Bond recognized an overriding "consensus that much more needed to be done and that much of it could be done through small businesses." Chairman Bond indicated his desire through the HUBZones Act to "encourage investment in low-income metropolitan and rural areas where poverty and unemployment are very important concerns," thus having an immediate impact on economically distressed areas and creating new job opportunities and growth.

The Committee primarily heard from the owner and employees of e. villages and its venture in Northwest Washington, D.C., Edgewood Technology Services, Inc. (ETS). C. Austin Fitts, co-founder of e. villages, testified that if the HUBZone Act were passed into law, it would "significantly support [e. villages'] mission of building a distributed work force in underserved communities." He pointed out the importance of the Act to offset effects of recently reduced subsidies for housing and how "successful efforts to promote economic growth in these communities [would] minimize Federal Government losses as well as losses on the part of private lenders and investors." In conclusion, Mr. Fitts recommends that the definition of eligible small businesses under this Act be simplified and the size standards be waived for those companies that are not able to achieve and maintain the 35% employment eligibility requirement.

Other witnesses included employees of ETS, which is a working HUBZone example. ETS employs residents of its immediate community, and all of ETS's employees are trained on-site and provide data processing and computer graphics specialization. According to the witnesses, the HUBZone Act would enable distressed and underutilized areas to provide jobs to citizens in areas where these opportunities may not otherwise be afforded, as well as minimize governmental loss by assisting those willing to help themselves move from welfare to work.

Marvin G. Harris, Site Manager of ETS, testified in support of the HUBZone and said, "the HUBZone legislation can provide significant subcontracting opportunities for small businesses." He also noted that the legislation provides significant training and helps instill a work ethic to a community sometimes overlooked. Mr. Harris was also accompanied by several of his employees, including Bridget J.C. McLaurin and Wanda Riddick, who provided examples of what ETS had done for their lives. They also discussed their views on the impact that a HUBZone can make on their community and communities like theirs.

There was a consensus among the witnesses that the HUBZone Act of 1996 would allow for improvement in the nation's inner cities and poor rural areas by providing incentives to small businesses to employ citizens of these areas. The witnesses stressed that the Act would have a significant effect on the lives of the people in these underutilized areas and would also benefit the state and federal government as well as the small business community.

"SMALL BUSINESS AND EMPLOYEE INVOLVEMENT: THE TEAM ACT PROPOSAL"—WASHINGTON, D.C., APRIL 18, 1996

On April 18, 1995, the Committee held a hearing on the effect of the Teamwork for Employees and Management (TEAM) Act of 1995, S. 295, on small business on April 18, 1995. The TEAM Act, introduced by Sen. Kassebaum, amends the National Labor Relations Act (NLRA) to allow employers and employees to participate in organizations created to address matters of mutual interest (including issues of quality, productivity, and efficiency) provided such organizations cannot negotiate, enter into, or amend collective bargaining agreements.

Chairman Bond stated in his opening statement that the NLRA offers two options to employees and managers: employee involvement through unions, or no involvement at all. As a result, the 90% of American workers who are not unionized have no opportunity to be involved in workplace decisions. He also explained that a small business owner from Missouri had wanted to attend the hearing, but her attorney explained that she risked a confrontation with the NLRB if she came to explain how her employees are involved in the workplace. Chairman Bond said that her story illustrated the importance of allowing small businesses to form informal partnerships with employees and said that it was regrettable that the current state of the law deterred her from appearing before the Committee.

Senator Warner who chaired the hearing at Chairman Bond's request, pointed out that employee involvement increases productivity and that in a time of global competition, the government should not be impeding competitive and safe workplaces. Senator Warner also emphasized that nothing in S. 295 prevents unionization.

The hearing was divided into two panels. The first panel included representatives from four small businesses. Bill Budinger, CEO of the Rodel, Inc., a Delaware manufacturer, opened his statement by saying that his attorneys had recommended that he not testify at the hearing. Mr. Budinger was a delegate to the White House Conference on Small Business and said that delegates at the conference discussed global competition and the need for American businesses to be capable of competing. He testified that his company formed committees that included employees to explore ways to decrease health-care costs and improve productivity. Mr. Budinger said that he realized that what he was doing probably violated the NLRA, but that employee involvement had helped his company enormously. Chester "Mac" McCammon described his experiences as an employee at Universal Dynamics, Inc., and he explained that he had been a union member in the past, but he now worked for a non-union company. Mr. McCammon said that he would like to see the law changed to allow a wider range of employee participation options in the management process. Mr. McCammon said that the quality control and other self-directed teams had to be dismantled at Universal Dynamics because of the National Labor Relations Board's (NLRB) interpretations of section 8(a)(2) of the NLRA.

Harold "Skip" Pascoe, an executive officer at Sunsoft Corporation, testified that employee participation has allowed his company to compete with larger corporations with more resources for personnel management, process improvements, and training. Mr. Pascoe also mentioned the regulatory requirements of other agencies, such as the Food and Drug Administration, which require employee involvement in manufacturing in direct conflict with section 8(a)(2) of the NLRA. Donna C. Gooch, Director of Human Resources at Sunsoft Corporation, explained that human resources coordination requires an understanding of what employees need and calls for recommendations so that "win-win" solutions can be implemented, both of which would be facilitated by enactment of the TEAM Act. Dennis Rampe, President of Precision Litho, testified about employee involvement at his printing company. Mr. Rampe explained that the primary goal of employee involvement entities was better communications between employees and management. Mr. Rampe believed that teams had improved trust and respect between employees and management, resulted in greater job satisfaction and customer service, and had helped his company be successful. Mr. Rampe noted, however, that after reading about section 8(a)(2) of the NLRA, he dismantled his employee teams. As a result, communications were not as successful and customer service suffered.

The second panel consisted of four experts on employment policy and business productivity with a variety of viewpoints. Owen Herrnstadt, Legislative Counsel to the International Machinists and Aerospace Workers, testified that passage of the Team Act would result in evisceration of the NLRA's prohibition of company unions. James Rundle, Senior Extension Association at the School of Industrial and Labor Relations at Cornell University, testified that the Team Act was unnecessary because the NLRB does not bring very many section 8(a)(2) cases. G. Roger King, a partner at Jones, Day, Reavis & Pogue, testified about section 8(a)((2) cases he had litigated. Mr. King described S. 295 as an extremely modest proposal that did not interfere with the NLRA. Mr. King emphasized that even if the NLRB did not bring many section 8(a)(2) cases, the threat of litigation was impeding employee participation and increased productivity. Edward E. Potter, President of the Employment Policy Foundation, testified about a study he had conducted that showed that 70% of productivity is due to employee involvement. Mr. Potter said that over a 20-year period, given the current level of employee involvement for the median-wage worker, the worker would make $17,000 more with employee involvement than without it because of increased productivity.

Following the hearing, the Senate and House approved an amended version of the TEAM Act. Despite strong small business support, President Clinton vetoed the legislation.

"ISSUES AFFECTING HOME-BASED BUSINESS OWNERS"—WASHINGTON, D.C., APRIL 23, 1996

On April 23, 1996 the Committee held a hearing on issues affecting home-based business owners. The hearing gave the Committee an opportunity to recognize and pay tribute to a growing phenomenon in America, that of the home-based entrepreneur. During 1995, approximately two million Americans started home-based businesses. The development of new computer and other technologies, corporate downsizing, and the need to balance the demands of work and family have all added to the increasing popularity of home-based businesses. Chairman Bond pointed out that “Changes in tax policy need to be considered to ensure that our laws do not inhibit the growth and development of home-based businesses.”

The Committee heart testimony from small business owners about three major tax issues: worker classification, the deductibility of health-insurance by the self-employed, and the home-office deduction.

WORKER CLASSIFICATION

Witnesses testified that determining worker classification is one of the most important tax issues facing small business today. The delegates to the White House Conference on Small Business ranked it as their highest priority issue. The ambiguity in the current law makes it extremely difficult for business owners to determine whether a worker is an independent contractor or an employee. For many years, the Internal Revenue Service has been using a 20-factor common-law test to determine worker status. The test is subjective and unpredictable and, IRS agents are capitalizing on the lack of clarity and resolving many cases in favor of an employment relationship at the expense and disruption of bona fide independent-contractor arrangements. As a result, some small business owners are reluctant to hire independent contractors.

Witnesses discussed their views of the Independent Contractor Tax Simplification Act, S. 1610, introduced by Chairman Bond and Senator Nickles to correct the problem. The bill sets out a short list of simple criteria in determining whether a person providing services to another is an employee or an independent contractor. To take advantage of this new provision, the parties must properly report payments to the IRS, just like under current law. This ensures that all taxes properly due to the Treasury will be collected. The bill provides immediate clarification and relief to taxpayers currently undergoing IRS examinations. The change in the law would save many businesses from long and expensive battles with the IRS.

Debbie Jo Horton, a CPA and the New England Regional Tax Implementation Chair to the White House Conference on Small Business, testified that this “bill represents the spirit of the White House Conference on Small Business recommendation #224. It addresses a majority of concerns raised by the delegates as their top vote-getter. I commend Senators Bond and Nickles for their diligence and consideration. It is one of the most important issues plaguing small businesses today.” Chairman Bond asked whether Ms. Horton, as a CPA, sometimes finds herself in a position of recommending to clients that they not use independent contractors because of the danger of being reclassified by the IRS. She indicated that she has made such recommendations in certain cases because the interest and penalties that accrue as a result of reclassification can be devastating to a small or even a mid-sized company.

Not all the comments regarding the bill were favorable. for example, Senator Wellstone was concerned that if the language is not carefully drafted there may be “a bunch of people who really are employees all of the sudden classified as independent contractors for the convenience of the company” potentially disadvantaging the employees. Senator Bumpers also wanted to see the language tightened up so that a new law is not created that could encourage coercive reclassification of workers.

HEALTH INSURANCE

Another top concern of home-based business owners is health insurance with nearly four million of the self-employed being uninsured. At the time of the hearing, the law provided that corporate employers could deduct the full cost of health insurance, while self-employed business owners could deduct only 30% of their health-insurance costs.

Jim Johnson testified on behalf of the National Federation of Independent Business and said that full deductibility would bring parity in this area of the tax law and would also create an incentive for the self-employed to purchase insurance for their employees. Ms. Horton testified that the deduction of health-insurance costs ranked 15th by the White House Conference delegates, and she also said that the "inequity places a severe financial burden on small businesses owners."

During the hearing there appeared to be bipartisan support for increasing the health-insurance deduction. The Chairman noted that the week prior to the hearing, the Senate voted on an amendment to the Health Insurance Reform Act that would increase the amount that self-employed individuals can deduct for health-insurance costs. The Chairman commented that while the legislation "is not perfect, it represents a step in the right direction in terms of leveling the playing filed for America's small business entrepreneurs" and pledged that his effort to achieve tax equity on this issue would continue to be a top priority.

HOME-OFFICE DEDUCTION

The Committee also heard testimony on a third tax issue important to home-based business owners, the home-office deduction. In 1993, the Supreme Court in, *Commissioner* v. *Soliman,* narrowed the availability of the home-office deduction. Under the *Soliman* decision, the bulk of the businesses revenue must be generated within the home office and the business owner must see clients in the home office in order to qualify for the deduction. The effect was to deny the deduction to self-employed plumbers, home-care nurses, contractors, and many others who perform their work outside of the home but whose office is their home. During the 104th Congress, legislation was introduced that would expand the deduction for small businesses and entrepreneurs and would allow the deduction if it is the sole location where essential administrative or management activities are conducted on a regular basis.

The Chairman noted the importance of the deduction to the self-employed and especially to parents raising children while working at home. In addition, he commented that as the number of home-based businesses increases, the importance of the deduction mounts.

Senator Bumpers pointed out that the logic behind the *Soliman* decision was, in his opinion, flawed in that it ignored the reality of today's business environment. He pointed out that although the deduction may have been abused by some taxpayers, that does not give cause for denying the deduction to those who are legitimately entitled to it. He cautioned that lawmakers "should do whatever we can to allow the deduction when a home office is a real cost of doing business, while at the same time taking care not to open a new loophole for those who are simply seeking a tax write-off.

Diane Sutton testified on behalf of the National Association for the Self-Employed and said that the number of home-based businesses is increasing because society is changing, technology is changing, and the workforce is changing. She went on to say that these changes are pushing away from the large employer and "one job site" model of the 1950s and 1960s. Ms. Sutton testified that an "enlighten approached to home-based businesses would be to facilitate home office deductions, with the appropriate safeguards against abuse." Ms. Horton testified that the *Saliman* decision should be reversed and pointed out that the White House Conference delegates also ranked the issue 29th amongst the top 60 issues.

The Chairman noted that access to technology, corporate downsizing, and the need for two income families will likely accelerate over time. He expressed his strong support for home-based entrepreneurs and his belief that Congress must do everything possible to create and maintain an environment where home-based businesses can grow and flourish.

"NOMINATION OF GINGER EHN LEW TO BE DEPUTY ADMINISTRATOR OF THE UNITED STATES SMALL BUSINESS ADMINISTRATION AND THE UNITED STATES SMALL BUSINESS ADMINISTRATION'S FISCAL YEAR 1997 BUDGET"—WASHINGTON, D.C., MAY 1, 1996

This was a combined hearing on the nomination of Ginger Ehn Lew to be Deputy Administrator of the Small Business Administration (SBA) and on the SBA's fiscal year 1997 budget.

Congresswoman Nancy Pelosi, of California addressed the committee concerning Ms. Lew, who is a native Californian. In her remarks Ms. Pelosi expressed considerable support for Ms. Lew from the entire California delegation. Senator Barbara Boxer of California also submitted a letter in support of Ms. Lew. Ms. Pelosi was later joined by Phil Lader, Administrator of the SBA in backing Ms. Lew.

Ms. Lew, a native of San Francisco, possesses a bachelor's degree in political science from UCLA and a law degree from the University of California. If confirmed she would bring a broad background to the SBA. Her experience includes service as a small business advisor for Arthur Young & Company, as well as a key role in the start up of a biotechnology company. She also has a strong background in government service. She served as Regional Chief Enforcement Counsel for the Department of Energy, and most recently she served as a top advisor to the late Secretary Ron Brown at the Department of Commerce.

As Deputy Administrator, Ms. Lew would essentially be the Chief Operating Officer of the SBA. She expressed a desire to "continue to advocate for changes within the SBA, as well as with other agencies, to find ways to relieve the regulatory burden on small businesses and to allow them to get on with the business of doing business." She also expressed a desire to develop a sincere cooperation with the Committee. "This Committee has had a long history of bipartisan support for our Nation's small business, and I look forward to working with you and other members in this spirit."

Ms. Lew answered questions from Committee members on a variety of topics including Committee initiatives, her experience, and her joint tax returns from 1992 to 1995, which showed no tax liability. This lack of liability was a major concern for Committee members and was apparently generated by losses involved in a limited partnership real estate venture.

During the hearing the Committee also addressed the fiscal year 1997 budget request for the SBA. Chairman Bond stated that he continues "to believe [the] SBA can be streamlined and made more efficient in achieving its mission." There is a need for the SBA to make better use of its resources and to prepare for the future of the SBA.

There was extensive discussion regarding the 7(a) and 504 loan program budget increase request. Mr. Lader said that the "principal portion of the additional amount in the President's budget" for these programs is consumed by a subsidy rate change by OMB. The remainder of the funds are necessary to keep up with the growth of the program.

Senator Olympia Snowe voiced the concerns of many Committee members when she noted in her written statement: "I am * * * concerned to see that the latest budget proposal of President Clinton includes a $664 million funding request for the SBA in 1997—an amount even greater than that requested in 1996. If we are to work toward a balanced budget, we must be sure that funding requests for federal programs are both justifiable and realistic * * *. I am concerned that this increased budget request may be lacking under both of these standards."

"SMALL BUSINESS INVESTMENT COMPANY REFORM LEGISLATION"—WASHINGTON, D.C. MAY 10, 1996

On May 10, 1996, the Committee held the third in a series of hearings to determine ways to improve the Small Business Investment Company (SBIC) Program. In his opening statement Chairman Bond expressed his desire "to continue to build on the improvements in the SBIC program contained in the law passed by Congress under Senator Bumpers' Chairmanship of this Committee in 1992."

During the first hearing in this series, the Committee heard from small business people who have used the SBIC program to their advantage in developing their business. Often the SBICs were the only ones willing to work with these small businesses. The second hearing consisted of testimony from people involved in venture capital lending, or more specifically, the lending/investing side of the SBIC program.

This hearing was designed to pull together the ideas from the first two hearings and to form draft legislation to improve the SBIC program. In his opening remarks, Chairman Bond identified these main objectives:

> "To reduce the risk of SBIC defaults by putting in place a few important statutory standards governing the licensing and leveraging of SBICs, such as increasing the required level of

private capital, eliminating the special distinctions between SBICs and SSBICs, requiring experienced and qualified management for all SBICs and requiring a level of diversification between SBIC investors and the management team";

To put "in place a few important statutory safeguards governing the operating practices of SBICs, such as requiring frequent and meaningful valuations and examinations of SBIC licensees and their investments, and setting reasonable limitations on the ability of SBICs with outstanding SBA leverage to further dilute their private capital reserves by incurring additional debt from other sources."

Chairman Bond also emphasized the importance of SBICs investing in businesses located at the lower end of eligible size standards. "Licensees with less than $2.5 million of private capital, while they represent 38 percent in number of all licensees, provide only 4 percent of the program's private capital." Leveraged at more than a four to one level, this amounts to significant risk for the SBA. In fact, since 1989, over 90 percent of the liquidation efforts by the SBA involved those licensees in the range below $2.5 million. This created some contention among Committee Members, some questioning the need to take the risk, and others insisting it is necessary. Terry L. Jones, President of Syncom Capital Corporation, pointed out that 80% of SSBIC's have private capital totaling less than $2.5 million. If the standard were changed, economically and socially disadvantaged people would be left out of the SBIC program.

The Small Business Administration indicated that it approves of any legislation that will improve its ability to provide equity and long-term debt, and reduce its cost to the taxpayers. The administration, however, does not support specifically legislating such regulations due to the lack of flexibility and the problems that it could cause.

"IMPLEMENTATION OF THE SMALL BUSINESS AGENDA"—WASHINGTON, D.C., JUNE 5, 1996

On June 5, 1996, the Committee held a hearing on implementation of its small business agenda. The Committee wanted to know how the small business agenda, which is based on recommendations of the 1995 White House Conference on Small Business and the Committee's prior hearings on Entrepreneurship in America, was being implemented by the Administration. One small business priority, paperwork reduction, was selected as a focus of the hearing.

The Committee sought to collect information on how the Paperwork Reduction Act of 1995 (PRA) was being implemented by federal agencies. Specifically, the Committee set out to examine whether PRA mandated government-wide paperwork reduction goals were established and being enforced by the Executive Branch. As practicable examples of compliance with PRA provisions, the Committee looked at paperwork reduction practices at the Internal Revenue Service (IRS), the Occupational Safety and Health Administration (OSHA), and the Environmental Protection Agency (EPA).

In addition to the PRA, the Committee evaluated the impact of other laws on the implementation of the small business agenda.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) as well as the newly amended Regulatory Flexibility Act were of particular interest to the Committee. The purpose of both of these laws, as well as the PRA, is to provide the small business community with tools to assist it in working within the government regulatory processes.

The Committee requested testimony on how Executive Branch policy and procedures were assisting small business in working with the regulatory process. The Committee was especially interested in testimony involving the SBA's Office of Advocacy. SBA's Chief Counsel for Advocacy is required by the SBA's enabling legislation to promote the interests of small business within the Administration, especially in regulatory matters.

Finally, the Committee sought testimony directly from small business representatives on implementation effectiveness. In particular, the Committee requested small business' perceptions of actions by the Office of Advocacy taken to represent small business concerns before regulatory agencies. The Committee also requested legislative recommendations from small business that could further support the efforts of the Office of Advocacy.

In his opening statement, Chairman Bond stated that the cost of the government's regulatory paperwork burden is enormous. The cost of paperwork burdens exceeds $400 billion per year, with small business' costs estimated at $100 billion dollars. Chairman Bond pointed out that these costs only represent the cost of preparing and filing forms, reports, and other paperwork required by the federal government. The government-wide paperwork burden total has risen substantially between 1980 and 1995 from 1.5 billion burden hours in 1980 to more than 6.9 billion hours in 1995.

The first panel of witnesses included Michael Brostek, Associate Director, Federal Management and Workforce Issues, General Government Division, General Accounting Office (GAO), and Peter F. Guerrero, Director, Environmental Protection Issues Resources, Community and Economic Development Division, GAO. The GAO testimony was developed in response to a February 1996 letter from Chairman Bond requesting testimony on the Administration's implementation of the Paperwork Reduction Act of 1995. Specifically, Chairman Bond requested testimony on: (1) what plans and processes OMB and certain agencies (EPA, OSHA, and IRS) have established to meet the Paperwork Reduction Act's burden reduction goals, (2) whether progress has been made since the Act became effective on October 1, 1995, both government-wide and in the three agencies, that will achieve the Act's burden reduction goals within the time frames established in the Act; and (3) measurement issues Congress should be aware of in its oversight of agencies' progress in reducing paperwork burden.

The GAO witnesses testified that the PRA requires the OMB's Office of Information and Regulatory Affairs (OIRA) to establish a 10% paperwork reduction goal in FY96 and FY97 as well as five percent goals for the following years. Mr. Brostak testified that OIRA has not, as of the hearing date, set any government-wide paperwork reduction goals for FY96 even though the PRA became effective October 1, 1995, nine months earlier. In addition, even if planned agency-specific goals were used, their total would not equal the 10% government-wide reduction goal. The GAO witnesses, based on their burden hour projections, stated that OIRA would only require agencies to attain a one percent government-wide reduction for FY96. This projection, combined with out-year PRA reduction requirements, was discussed, and the Committee expressed concern about the Administration's failure to attain the reduction goal.

GAO's testimony provided examples of agency compliance with the PRA. Mr. Brostak testified that EPA Administrator Carol Browner committed the Agency to a 25% paperwork burden reduction from its January 1995 baseline of 81 million hours by June 1996. Contrary to EPA's commitment, GAO's analysis projected EPA's paperwork burden would total 117 million hours by September 1996, a 44% increase. An accurate EPA paperwork baseline was a subject of lengthy discussion at the hearing. EPA, according to GAO, had revised its baseline several times during 1995 and 1996 making consistent analysis difficult. In summary, GAO agreed with Committee members that EPA's paperwork burden was continuing to increase. One reason cited by GAO for the increase was new regulation requirements, such as the Clean Air Act.

The GAO witnesses testified that OSHA originally projected its paperwork reduction burden at four percent. OSHA subsequently revised its reduction by interpretive rulings within the Department of Labor, thereby claiming an eight percent reduction. To do this, OSHA claimed an additional 17 million burden hour reduction due to planned phase out of third-party information collection burden. This interpretive ruling prompted discussion on whether agencies were keeping different sets of books, one for public release and a second with reduction figures. The GAO witnesses responded that agencies had been revising their burden hours totals since the original PRA baselines were established in August 1995 and that this made consistent goal evaluation difficult.

GAO testified that the IRS, which accounts for over 75% of the total government paperwork burden, has claimed savings in simplifying forms and instructions as well as moving eligible taxpayers to the "EZ" versions of required forms. Ms. Brostak testified that IRS would only reduce its paperwork burden by 0.9% for FY96.

Finally, the GAO witnesses testified that OIRA had failed to keep Congress properly informed of major activities related to the PRA, as required under the Act. Mr. Brostak pointed out two major activities of which Congress was not informed: (1) OIRA has not established any burden reduction goals to date, and (2) agency projections, which OIRA received in early 1996, indicated that the 10% government-wide paperwork reduction goal called for in the Act would not be achieved.

The Committee examined the Office of Advocacy's 1995 annual report of agency compliance with the Regulatory Flexibility Act. The report's purpose is to inform the small business community and others of the regulations on which the Office of Advocacy has commented on. As a result, the report serves as an indicator of the Office of Advocacy's support of the small business agenda. Chairman Bond stated that 5,133 regulations were considered by the federal government in FY95, of which 918 regulation were considered significant by the federal agencies themselves. Chairman Bond pointed out that the Office of Advocacy filed only 57 written comments to the 918 significant rules under consideration. In addition, only four of the 57 comments dealt with the big three agencies for small business: EPA, OSHA, and IRS. Chairman Bond compared 1995 totals to 1992 when over four times as many comments were written, even though there were almost 1,000 fewer regulations considered in 1992.

The witnesses on the second panel testified about the Office of Advocacy's performance. The Committee, in addition to information collection, was seeking testimony on potential legislative recommendations to strengthen the Office of Advocacy. The panel included Mary K. Ryan, Deputy Chief Counsel, Office of Advocacy, SBA, who testified that the major starting point for Office of Advocacy activities is to implement the 60 recommendations of the White House Conference on Small Business. Ms. Ryan testified about specific Office of Advocacy actions that were undertaken to implement the conference recommendations, especially the use of information and education initiatives.

The second witness on this panel was Jack Faris, President, National Federation of Independent Business, which represents over 600,000 small businesses across the country. Mr. Faris's testimony outlined several legislative and executive actions required to fulfill small businesses' priorities, including regulatory reform, tax reform, health-care reform, legal reform, and a balanced federal budget.

The final witness was R. Wendall Moore, Executive Vice President and Co-Founder, Red Hot & Blue Restaurants, Inc., who, in addition to being a small businessman, was a former Acting Chief Counsel for Advocacy as well as Deputy Chief Counsel for the SBA. Mr. Moore testified, based on his SBA experience, that while the Office of Advocacy was legislatively intended to be "an independent voice" for small business, he believed that the public law establishing the Chief Counsel is inconsistent with the original congressional intent and therefore does not allow the Office to operate independent from Administration policy. Mr. Moore testified that since the Chief Counsel for Advocacy is appointed by the President and the office's budget and staff levels are determined by a presidential appointee, its independence is extremely improbable. Mr. Moore gave legislative recommendations that could be considered to strengthen the Office of Advocacy.

One issue discussed during the hearing was the potential minimum wage increase, which eventually passed the Congress in September 1996. Messrs. Faris and Moore commented that the proposed minimum wage would impose an additional burden on the small business community. Mr. Faris expressed the concern that the minimum wage was not even on the "radar screen" as a issue for small business at the White House Conference. As a result, he was unclear why the Administration would make it a priority at this time.

The small business panel also provided the Committee with testimony advocating major reform in the present tax code. The panelists stated that the majority of federal paperwork requirements presently imposed on small business revolve around the current tax system, and until this structure is modified, changed, or scraped, many small business persons will view paperwork reduction actions as a Washington bureaucratic game.

"IMPLEMENTATION OF THE SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF 1996"—WASHINGTON, D.C., JULY 24, 1996

On July 24, 1996, the Committee held an oversight hearing on the Administration's implementation of the Small Business Regulatory Enforcement Fairness Act (SBREFA). On March 29, 1996, as Title III of the Contract with America Advancement Act, SBREFA was signed into law by President Clinton. The effective date of SBREFA was June 28, 1996. The Act, originally sponsored in the Senate by Chairman Bond as S. 942, is intended to legislate specific recommendations of the 1995 White House Conference on Small Business, which deal with the development and enforcement of federal regulation, including judicial review of agency actions under the Regulatory Flexibility Act.

In authorizing judicial review of the Regulatory Flexibility Act, SBREFA helps insure that federal agencies consider ways to reduce any significant economic impact of new regulations on small businesses. In addition, it requires federal agencies to prepare "Plain English" compliance guides spelling out in easy to follow language how small business can comply with federal regulations.

Another provision sets up an independent Ombudsman to receive confidential complaints and comments from small businesses about their dealings with federal regulators. Regional review boards will "rate the regulators" based on these comments and publish their findings in a report card for each agency. SBREFA also allows small businesses to recover their expenses and legal fees from the government when enforcers make excessive demands for fines or penalties that cannot be sustained in court. Finally, the bill authorizes Congress to review and overturn new regulations written by federal agencies within a 60-day window. This last provision was not part of the bill as reported by the Committee, and therefore was not a focus on the hearing.

While SBREFA had only been in effect for less than a month on the hearing date, the hearing was held to determine what actions the Administration had taken to date in compliance with the new law. The Committee received testimony from the OMB's Office of Information and Regulatory Affairs (OIRA) and SBA's Office of Advocacy on Administration plans for SBREFA implementation. Additionally, the Committee sought the perspective of small businesses on what effect any circumvention of SBREFA procedures would have on their businesses' activities.

The first panel consisted of Sally Katzen, Director, OIRA and Jere Glover, Chief Counsel, Office of Advocacy, SBA. Ms. Katzen testified that the Administration was active in its support for the passage of SBREFA and highlighted provisions of the legislation for implementation. Ms. Katzen testified that OIRA and the SBA have worked together on a wide range of issues and had already begun planning discussions with regulatory agencies on the implementation of SBREFA.

Mr. Glover testified about the Office of Advocacy's implementation of SBREFA. He pointed out that judicial review was a major recommendation of the 1995 White House Conference on Small Business and complimented the Committee for moving swiftly to address this important issue. Mr. Glover went on to explain that the Office of Advocacy was involved in several avenues of outreach to inform and educate small business about the SBREFA provisions.

One issue of significance discussed in the hearing was the meaning of the term "significant impact on a substantial number of small businesses," as required by the Regulatory Flexibility Act. Mr. Glover testified that industry data is helpful, but many times this issue becomes a judgment call caused by individual circumstances. Chairman Bond followed up Mr. Glover's testimony by questioning him about whether the SBA had provided the necessary guidance to agencies on this issue. Chairman Bond pointed out that recent SBA guidance failed to address this issue.

This issue of OIRA and SBA providing meaningful guidance on the Regulatory Flexibility Act was discussed by the Committee and the Administration witnesses. Both witnesses were asked for assurances that their offices would provide proper guidance and accountability procedures to agencies to ensure compliance with the Regulatory Flexibility Act provisions. Specifically, Section 610 of the Act, requiring agencies to inform small business of the periodic review of significant regulations, was reviewed. The Committee wanted to make sure that agencies review their present Section 610 procedures to ensure compliance with its provisions for advance notification to small business in the rulemaking process.

Finally, Chairman Bond, as a follow-up to the June 1996 Committee hearing on implementation of the small business agenda, asked Ms. Katzen when OIRA would issue the required Paperwork Reduction Act burden reduction goals for fiscal year 1996. The Chairman expressed concern that the Administration was 10 months into the fiscal year and had not issued any reduction goals. Ms. Katzen answered that Administration officials were continuing to meet and discuss the reductional goals but had not come to any final conclusions.

The second panel of small business representatives testified on recent agency regulatory actions. This panel provided the Committee with a small business perspective on the Administration's implementation of SBREFA. The panel included: William M. Smiland, Co-owner, Smiland Paint Company; Richard Hardy, President, XIM Products, Inc.; Willis J. Goldsmith, Partner, Jones, Day, Reavis & Pogue; and Jean Smith Mohler, Assistant Counsel, Petroleum Marketers of America.

The panelists focused on EPA and OSHA regulatory actions and how these actions appear to circumvent new regulatory procedures mandated by SBREFA. Mr. Smiland pointed out that EPA issued a paint and coatings proposed rule on June 26, 1996 just two days before the effective date of SBREFA. Additionally, he pointed out that EPA only issued part of the proposal on June 26 and did not publish the remainder of the rule until the next week, after the SBREFA effective date. By doing this, Mr. Smiland suggested, the agency had no requirement to convene a Small Business Advocacy

Review Panel as required under SBREFA. As a result, small business was denied a valuable tool for input into the rulemaking process.

Mr. Goldsmith testified that OSHA, by issuing guidelines for Nighttime Workplace Violence instead of following traditional rulemaking procedures has denied small business important protections in the rulemaking process. Mr. Goldsmith testified that some OSHA guidelines, as issued, can be used for enforcement purposes thereby making guidelines have the same effect as OSHA rules without being subject to key rulemaking provisions, such as public comment from small businesses, as required by SBREFA.

Ms. Mohler testified that EPA, on June 27, 1996, one day before SBREFA's effective date, published a proposed rule to expand the Toxics Release Inventory (TRI). Ms. Mohler pointed out that the rule, which must be approved by OMB before publication, appears to have been significantly expedited by OMB to allow EPA to publish it before the SBREFA effective date. Ms. Mohler testified that while some rules require months of OMB review, the TRI rule was cleared by OMB within one week of review. Additionally, Ms. Mohler believes that EPA's initial regulatory flexibility analysis, as called for in Regulatory Flexibility Act, was badly flawed. She suggested that the Agency's haste to publication was done to avoid the small business review panel required under SBREFA, and as a result the quality of the analysis suffered.

The Committee heard testimony from Mr. Hardy on the significant impact that the paint and coatings rule is having on his small business. He testified that this rule will require his company to spend over $1 million in research to find alternative methods to comply with the new rule. He testified that the rule significantly effected speciality paints, which are an important part of his business and that of many small paint manufacturers and painters. Mr. Hardy stated that input from small paint companies, as required under SBREFA, would have allowed for a more orderly and less costly transition to the proposed rules for small business.

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